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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner*,

vs.

THE NATIONAL CITY BANK OF NEW YORK, *Respondent*.

BRIEF FOR PETITIONER

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vs.

THE NATIONAL CITY BANK OF NEW YORK, *Respondent.*

BRIEF FOR PETITIONER

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

This case involves the power of the Philippine Government to tax the Philippine branches of the National City Bank of New York. The Bank sued the Collector for a refund of ₱77,324.11 paid under protest, partly taxes on its capital employed in the Islands ("capital taxes"), and partly taxes on its deposits in the Islands ("deposits taxes"). The Court of First Instance held the deposits taxes invalid and directed their refund, but sustained the capital taxes (R. 136-137). The Philippine Supreme Court, — the CHIEF JUSTICE taking no part, and JUSTICE SANTOS dissenting,— held both classes of taxes invalid as beyond

the power of the insular government (R. 142-156; 156-161).[1] This court granted certiorari (R. 178).

QUESTION PRESENTED

The single question is whether the Philippine Government may tax the Philippine branches of the National City Bank of New York, a national banking association ("national bank") of the United States.

This divides itself into two: (a) Does either the tax section of the National Bank Act,[2] or Section 25 of the Federal Reserve Act[3] authorizing the establishment of "foreign branches" of national banking associations of the United States, extend to the Philippines? And (b) is there any implied prohibition against the insular government taxing the Philippine branches of a national bank?[4]

STATUTES

Pertinent provisions of Acts of Congress and of Philippine statutes are in the Appendices (*infra*, pp. 47-90).

STATEMENT

This was an action in the insular Court of First Instance

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[1] Reported in Philippine Official Gazette, July 23, 1935, Vol. XXXIII, p. 1706.

[2] Section 41 of the National Bank Act of June 3, 1864, c. 106, 13 Stat. 99, 112, as reenacted in Section 5219 of the Revised Statutes, as amended by the Act of March 25, 1926, c. 88, 44 Stat. 223; 12 U. S. Code, Supp., 548.

[3] Section 25 of the Federal Reserve Act of December 23, 1913, c. 6, 38 Stat. 251, 273, as amended by the amendatory Act of September 7, 1916, c. 461, 39 Stat. 752, 755, and as further amended by Section 2 of the Act of September 17, 1919, c. 60, 41 Stat. 285, 286; 12 U. S. Code, 601.

[4] The question here presented differs sharply from that in *Manuel V. Domenech, Treasurer of Puerto Rico*, v. *National City Bank of New York*, No. 386 at the October Term, 1934, of this court, decided February 4, 1935, 294 U. S. 199, in that the statutory laws of the United States not locally inapplicable are expressly extended to Puerto

of Manila by the respondent bank against this petitioner as Collector of Internal Revenue of the Philippine Islands to recover ₱77,324.11 paid by the respondent bank under protest on October 23, 1931, **"as deposit and capital taxes, for the first half of the year 1931"** (R. 2). The plaintiff bank (respondent here) alleged in its complaint in the Court of First Instance (Par. II; R. 2-5):

> "That for the same period the Collector has demanded and received a return of income upon which income tax will be collected. That the Administrative Code of the Philippine Islands provides for the collection from all banks doing business in the Philippine Islands of deposit and capital taxes and Act 2833 as amended, provides for the collection of income taxes from all corporations and associations doing business in the Philippine Islands and deriving its income therefrom. That under the laws of the United States national banks are instrumentalities of the United States of America upon which no taxes may be levied except as provided by the laws of the United States of America. The law of the United States of America permitting the taxation of national banks (section 548, United States Code, annotated), reads as follows:" [*quoting Section* 548, Title XII, U. S. Code, Supp.; *which is* R. S. 5219 *as amended;* Appendix I, *infra,* pp. 57-58); *and then proceeding*] "That there is no provision in the laws of the United States of America authorizing the Philippine government to tax a na-

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Rico by the Organic Act of Congress for that Island, Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (48 U. S. Code, 734); whereas, directly to the contrary, the Organic Act for the Philippine Islands provides:

> "That the statutory laws of the United States hereafter enacted *shall not apply* to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act." (Act of August 29, 1916, c. 416, Sec. 5, 39 Stat. 545, 547; 48 U. S. Code 1003; *infra,* Appendix I, p. 48; *Italics supplied.*)

tional banking association both upon its capital and deposits and also impose an income tax upon its earnings."

The defendant Collector (this petitioner) in his answer in the Court of First Instance (R. 8) denied generally that the bank had any right of recovery, and insisted that the tax was properly collected under Section 1499 of the Philippine Administrative Code, as amended by Philippine Act 3199 (*infra*, Appendix I, p. 63). The case came on for trial before the Court of First Instance on August 28, 1933, and evidence oral and documentary was received, including copies of the articles of association of the respondent bank (R. 29-38), and of the order of the Federal Reserve Board, January 23, 1930, granting the bank's application for permission to establish branches in Manila and Cebu in the Philippine Islands ("Exhibit B", R. 39-43). The bank's by-laws were also offered in evidence ("Exhibit C", R. 48-61), and a "condensed statement of condition June 30, 1931, of The National City Bank of New York, including domestic and foreign offices" ("Exhibit D", R. 61-70), and a copy of the power of attorney to the manager of its Manila branch ("Exhibit E", R. 71-82), with a detailed statement of the monthly amounts of deposits and capital employed in the Manila Branch, for the six months ending June 30, 1931 ("Exhibit F", R. 83-112). Statements were also introduced showing how the amounts of the capital taxes and the deposits taxes respectively were computed ("Exhibits F to L", inclusive; R. 83-131). No question appears to have been made in the pleadings or at the trial or anywhere in the record of this case of the correctness and accuracy of the amounts of the taxes involved,—the "capital taxes" and the "deposits taxes" respectively,—or that they were properly computed and levied in accordance with the provisions of the Philippine statutes. The only question in this case is as to the power of the Philippine government to levy the taxes; that is to say as to the

validity of the statute so far as it attempts to levy these taxes upon these "branches" in the Philippines of the National City Bank of New York.

DECISION OF THE COURT OF FIRST INSTANCE

The "Decision" of the Court of First Instance, October 16, 1933 (R. 132-137), upheld the "capital taxes"; but held the "deposits taxes" invalid, and directed the refund of their amount, ₱61,219.43, to the plaintiff bank.

OPINION OF THE PHILIPPINE SUPREME COURT

The opinion of the Supreme Court of the Philippine Islands is reported in the Philippine Official Gazette, in its issue of July 23, 1935, Vol. XXXIII, p. 1706. The decision was by a divided court. The majority opinion and the judgment of the court (BUTTE, J., R. 142-156, 174-175) affirms the judgment of the Court of First Instance insofar as that court held the "deposits taxes" invalid, but reverses it insofar as that court upheld the validity of the "capital taxes".

The effect of the judgment of the insular Supreme Court is, therefore, to hold the insular government without power to levy either the "capital taxes" or the "deposits taxes", —that is, it held all of the taxes involved in this case, of both classes, invalid, and beyond the power of the insular government to levy. The CHIEF JUSTICE took no part in the decision (R. 156); and JUSTICE SANTOS (R. 156-161) filed a vigorous dissenting opinion.

PETITIONER'S CONTENTION

Petitioner believes that both classes of the taxes here involved,— both the "capital taxes" and the "deposits taxes",— were validly levied; that it is within the power of the Philippine Government to impose them; that neither Section 25 of the Federal Reserve Act authorizing "foreign branches" of national banks, nor the taxing section of the

National Bank Act (R.S. 5219) runs to the Philippine Islands; and that, therefore, the so-called "branches" of the National City Bank of New York in the Philippine Islands are not in reality or legally branches of a national banking association of the United States, and that there is no federal statute limiting the general legislative and taxing powers given to the Philippine Legislature by the Organic Act in relation to taxing them; and that there is no implied limitation on those powers, so far as these taxes are concerned. And that, therefore, the judgment of the Philippine Supreme Court in this case is wrong, and should be reversed, and the taxes here involved held valid.

The single question is of the power of the Philippine Government to tax these so-called "branches" in the Philippine Islands of a national banking association of the United States.

JURISDICTION

The final judgment of the Philippine Supreme Court was entered October 10, 1934 (R. 174-175). On April 3, 1935, Mr. Justice Sutherland made an order extending the time within which to apply to this court for a writ of certiorari until June 9, 1935 (R. 177; for sixty days after April 10th). The petition for certiorari was filed June 8, 1935, within the time thus limited. Certiorari was granted October 14, 1935 (R. 178) under section 7 of the Jurisdiction Act of February 13, 1925, c. 229, 43 Stat. 936, 940. The value in controversy here, ₱77,324.11 ($38,662.05; R. 2, 7, 132, 143, 175), exceeds $25,000; and the case also involves the construction and applicability of statutes of the United States, particularly the National Bank Act and its taxing section 41 (now R.S. 5219 as amended), and Section 25 of the Federal Reserve Act as amended, as well as those sections of the Organic Act for the Philippine Islands conferring general legislative and taxing powers on the Philippine government, and other related statutes concerning

the status of the Philippine government and the extension of United States statutory laws to the Islands.

SUMMARY OF ARGUMENT

1. This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *National City Bank,* 294 U. S. 199, decided February 4, last, in that the statutory laws of the United States do not run generally to the Philippine Islands, as they do to Puerto Rico. The National Bank Act, including its taxing section 41, now R. S. 5219 as amended, is in force in Puerto Rico because by the Organic Act for that Island the Congress directed that the statutory laws of the United States not locally inapplicable should run there. But from the earliest days the policy of the Congress as to the Philippines has been directly to the contrary. The Foraker Act of 1902, the first Organic Act, directed that the section of the Revised Statutes, Sec. 1891, extending the statutory laws of the United States to the Territories generally *should not be in effect in the Philippines;* and that was followed up by the "Jones Law" of August 29, 1916, the present Organic Act, which after declaring in its preamble the purpose of the people of the United States to withdraw their sovereignty from the Philippine Islands and to recognize their independence as soon as a stable government could be established, reciting that for that purpose it was necessary to place in the hands of the Philippine peoples as large a control over their domestic affairs as was practicable without impairing the sovereignty of the United States, directed, in Section 5 of the Act, that "the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act". The National Bank Act has never been extended to the Philippine Islands, and is not in force there; and hence the limitations upon the taxing powers of States in relation to national

banks contained in its taxing Section 41, now R. S. 5219, are not in force there, and do not in any way affect the general taxing powers of the Philippine Government with relation to banks doing business in the Islands, whether branches of national banks of the United States or foreign banks or domestic banks of the Islands.

2. The general legislative powers, including the taxing powers, reposed in the Philippine Legislature by the Organic Act, subject to the command of the Congress in Section 3 of that Act, "*That the rule of taxation in said islands shall be uniform*", apply alike to all banks and other financial institutions and corporations doing business in those Islands. There is no exception or exemption with relation to branches of national banks. Nor can it properly be presumed that the Congress intended such branches to be exempted from taxation as "instrumentalities of the United States". Since there is no express exemption by any Act of Congress, and since the taxing section (R. S. 5219 as amended) of the National Bank Act has not been extended to the Islands, any such a presumption, if it were to be indulged, would exempt branches of national banks, not only from the insular "capital taxes" and "deposits taxes" here in question, *but also from all other insular taxation*,— the real estate tax, and the income tax, equally with the taxes here in question; since, outside of the taxing section of the National Bank Act which does not run to the Islands, there is no ground for maintaining any distinction whatever between the different classes of taxes levied by insular legislation. The rule that a "dependency may not tax its sovereign" is qualified by the *proviso* that it may do so with the sovereign's consent; so that the whole question is really whether or not the Congress has impliedly given its consent. The presumption that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a

Territory or of a dependency applies with but limited force in the case of a bank; which is primarily a corporation for profit and is only secondarily or in a limited sense an agency of the federal government in some of its fiscal operations. The Congress has established a separate coinage and currency system for the Philippine Islands, as well as separate tariff and immigration laws. It has authorized the insular Legislature to guarantee the income of the insular Agricultural Bank, afterwards merged into the Philippine National Bank, a truly national bank for the Islands, an arm of the insular government in a much more effective sense than are United States "national banks". It has not extended the National Bank Act, nor its taxing section, to the Islands; and it has granted the insular Legislature general legislative and taxing powers, and has declared without qualification that "the rule of taxation in the islands shall be uniform". It has not expressly exempted the Philippine branches of national banks of the United States from that rule of uniformity; nor even expressly extended to the Islands the provision of Section 25 of the Federal Reserve Act authorizing the establishment of branches of national banks in dependencies and insular possessions of the United States. The present insular legislation, under which the taxes here in question were levied, was in force in the Islands in almost exactly the same identical form as at present, in Sections 1654 and 1657 of the former Administrative Code of the Islands (Act No. 2657, approved February 24, 1916) when the Congress adopted the present Organic Act of August 29, 1916, and by Section 6 of that Act expressly continued "the laws now in force in the Philippines", "in force and effect, except as altered, amended, or modified herein", without making any exception of those bank tax sections of the Administrative Code. And they have been in force in the Islands ever since. In view of these facts and of the fact,—of which the Congress must be presumed

to have been aware;—that, in the absence of any extension to the Islands of the taxing section of the National Bank Act, Philippine branches of United States national banks *cannot be taxed at all by the insular government by any form of taxation* and will, therefore, enjoy such a business advantage as practically to give them a banking monopoly in the Islands, *unless the Congress intended to extend the insular government's general taxing powers to them* regardless of whether they may sometimes be employed as "instrumentalities of the Federal government" for some fiscal purposes,—it is not to be presumed that the Congress intended to stretch a presumption to any such length; but on the contrary that it intended the insular government's general taxing powers to extend to those branch banks.

3. As already noted, the Congress by Section 6 of the Organic Act of August 29, 1916, expressly recognized and continued in force the laws then in force in the islands. This ratification included Sections 1654 and 1657 of the former Administrative Code then in force, and since re-enacted in substantially identical form, under which the taxes here in question were levied. That ratification was of course within the powers of the Congress.

4. Since Section 25 of the Federal Reserve Act, authorizing the Federal Reserve Board to permit the establishment of branches of national banks in foreign countries and in "dependencies and insular possessions" of the United States, does not expressly mention the Philippine Islands, and has never been expressly extended to those Islands, it is not in force there, any more than is the taxing section of the National Bank Act or any other part of the National Bank Act. It follows that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and in Cebu in those Islands, offered in evidence by the bank here (R. 42-43), is wholly void, of no effect whatever, and gives no authority for the establishment or existence of these branches in the Philippine

Islands. Whatever else these so-called "branches" of the National City Bank in the Philippine Islands may really be,— if there is any legal authority whatever for their existence at all,— they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other Act of the United States. They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the Islands, or as *de facto* domestic banks of the Islands, existing and carrying on business under Philippine law,— in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license of the Federal Reserve Board; since the Board has no power,— and never has had any power,— to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be located outside of the continental United States,— or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended, which does not authorize such a branch in the Philippine Islands, because the Act does not expressly mention those Islands, and it has never been extended there.

5. It follows that there is no federal limitation whatever preventing the insular government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; that the taxes are valid; and that the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila should be reversed, and this case remanded with directions to dismiss the action at plaintiff's costs.

ARGUMENT

POINT I

Neither the taxing section of the National Bank Act nor any

other part of that Act, nor Section 25 of the Federal Reserve Act, runs to the Philippine Islands.

A.—This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *The National City Bank of New York,* 294 U. S. 199, recently decided by this court. The statutory laws of the United States not locally inapplicable run generally to Puerto Rico, by virtue of the provisions of Section 9 of the Organic Act for Puerto Rico,[5] including the National Bank Act with its taxing Section 41, now R. S. 5219 as amended, and the Federal Reserve Act including its Section 25 authorizing the Federal Reserve Board to license branches of United States national banks to be established in foreign countries and in "dependencies or insular possessions of the United States" and therein "to act if required to do so, as fiscal agents of the United States" (*Domenech* v. *National City Bank, supra,* 294 U. S. 199, 204, 205). But directly to the contrary, **the statutory laws of the United States do not run generally to the Philippine Islands.**[6]

The policy of the Congress with relation to the Philippine Islands has, from the beginning, differed sharply from that with relation to Puerto Rico as well as from that with relation to Hawaii and the former Territories here in the mainland United States which it was always understood were on their way to ultimate Statehood. From the beginning it has apparently been the policy of the Congress to prepare the Philippine Islands for ultimate independence from the United States; and its legislation with respect to them has differed accordingly from that with respect to

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[5] Act of March 2, 1917, c. 145, 39 Stat. 952, 954; 48 U. S. Code 734.

[6] Philippine Organic Act of August 29, 1916, c. 416, Section 5, 39 Stat. 545, 547; 48 U. S. Code 1003. Former Organic Act for the Philippines, "Foraker Act", Act of July 1, 1902, c. 1369, Section 1, 32 Stat. 691; *infra,* Appendix I, pp. 47, 48.

Puerto Rico and the Territories. Accordingly, in harmony with that general policy of differentiating the status of the Philippine Islands, the original Organic Act for those Islands, the "Foraker Act" of July 1, 1902, omitted the provision usually found in Territorial organic Acts,—and which was incorporated in substance in the original Organic Act for Puerto Rico,[7] as well as in the present Organic Act for that island.[8] But in dealing with the Philippine Islands the Congress provided, directly to the contrary, in the first Organic Act, the Philippine "Foraker Act" of July 1, 1902, c. 1369, Section 1, 32 Stat. 691, that Section 1891 of the Revised Statutes should not be in force in those Islands,[9] and followed that up by providing in Section 5 of the present Organic Act, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, 547:

> "That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

The Philippines, of course, like all other territories belonging to the United States, are subject to the plenary power of the Congress under Clause 2 of Section 3 of Article IV of the Constitution, to:

> "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States";

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[7] "Foraker Act for Puerto Rico", Act of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, *supra.*

[8] Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954; 48 U. S. Code 734, *supra.*

[9] Section 1891 of the Revised Statutes is the section providing generally that the Constitution and laws of the United States shall be in force in every organized Territory; *infra,* p. 15; and Appendix I, p. 47.

but the Constitution is self-executing in them only insofar as it protects the fundamental rights of free men. *Balzac* v. *Porto Rico*, 258 U. S. 298, 305, 312-313, accepting as "the settled law of the court" the doctrine of the separate concurring opinion of WHITE, J., in *Downes* v. *Bidwell*, 182 U. S. 244, 290-291. With that limitation saving the fundamental rights of free men, the Congress may in its discretion adopt for any territory belonging to the United States such laws and "Rules and Regulations" as it may deem fit; **and may or may not, as it shall determine to be best from time to time, extend to any territory the operation of any statute or law of the United States.**

B.—From the beginning of the government, the Congress has freely exercised this power.

The former Territories within the continental United States which have since been erected into States, were from the first generally understood to be destined for Statehood. Hence it early became the habit of the Congress to provide in their Organic Acts that all of the laws of the United States not locally inapplicable should be in force within the Territory; although, in the very beginning, it did not do so, but, instead, inserted in the Organic Act a list of those of its Acts which should be in force within the particular Territory.[10] Examples are Section 7 of the Act establishing the Territory of Orleans, now the State of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285, and Section 9 of the Organic Act of Florida, Act of March 30, 1822, c. 13, 3 Stat. 654, 657 (Appendix II, *infra*, pp. 66-68); but in the Florida Act there was added,

[10] A resumé is in Appendix II of the action of the Congress in the various Territorial Organic Acts prior to the time when Puerto Rico and the Philippines came to the United States by the Spanish War, with reference to extending particular Acts of Congress, or the statutory laws of the United States generally, to the various Territories (*infra*, pp. 66-70).

at the end of the list, a general clause, — "*and all other Public Laws of the United States, which are not repugnant to the provisions of this Act*" (3 Stat. *supra*, at p. 658); and in the Organic Act for Wisconsin it was broadly declared that "the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof, may be applicable" (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15; Appendix II, *infra*, p. 68). Such a general extension continued thereafter to be the habit, and was embodied in the "Provisions Common to all the Territories" in Title XXIII of the Revised Statutes of 1873, as Section 1891, reading:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories and in every Territory hereafter organized as elsewhere within the United States."

That section was republished without change in the 1878 edition of the Revised Statutes (*infra*, Appendix I, p. 47). Its effect was to incorporate all of the organized Territories into the Union. It was based upon the general understanding that all of the Territories were destined for Statehood; and it was in force at the outbreak of the Spanish American War, and when by the treaty of peace at its conclusion Puerto Rico and the Philippines were ceded to the United States, and when, at about the same time, Hawaii was annexed.

C.—But, as above pointed out, in dealing with the new Territories thus acquired outside of the limits of the continental United States, the Congress from the outset made a sharp differentiation between the Philippine Islands on the one hand, and the other newly acquired territories on the other hand, in relation to extending to them the laws of the United States, and in relation to the apparent purpose

of the Congress concerning their ultimate destiny. To Hawaii it extended Section 1891 of the Revised Statutes in full force, thereby extending to that Territory not only the laws of Congress but also the Constitution in its full force, and thereby definitely "incorporating" Hawaii into the Union. (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 4, 39 Stat. 141; *Hawaii* v. *Mankichi*, 190 U. S. 197, 211, 220). And likewise as to Puerto Rico, while the Constitution in its full force was not extended to that Island,—and Puerto Rico is, therefore, not "incorporated" into the Union (*Balzac* v. *Porto Rico*, *supra*, 258 U. S. 298, 305-314),—yet as above pointed out, by the first Organic Act for that Island, the "Foraker Act" of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, it was provided:

> "That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws";

and afterward by the present Organic Act for that Island, the Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (*infra*, Appendix V, p. 87) that provision was reenacted and continued in force, and further by Section 5 of that Act (39 Stat. at p. 953; Appendix V, *infra*, pp. 86-87), United States citizenship was extended to the citizens of Puerto Rico.

D.—But as to the Philippine Islands, directly to the contrary, the Congress provided by the first Organic Act for those islands, as already pointed out (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691, 692; *infra*, Appendix I, p. 47) that:

> "The provisions of Section 1891 of the Revised Statutes of 1878 *shall not apply* to the Philippine Islands" (*italics supplied*);

and followed that up fourteen years later by the provision of Section 5 in the present Organic Act of August 29, 1916

(*infra*, Appendix I, p. 48), expressly directing that the statutory laws of the United States enacted after that date "*shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act*". And in the meantime, the Congress, instead of extending the United States tariff laws to the Philippine Islands, had by the Act of August 5, 1909, c. 8, 36 Stat. 130 (Appendix I, *infra*, p. 54), created a separate tariff system for those Islands; and by Section 10 of the present Organic Act of August 29, 1916 (Appendix I, *infra*, pp. 48-49), it granted to the Philippine Legislature power, with the approval of the President, to modify the tariff laws for the Islands at any time and to adopt new tariffs for themselves; and likewise the authority, with the approval of the President, to modify the immigration laws and the currency and coinage laws of the Islands (39 Stat. at p. 548; *infra*, Appendix I, *ib.*, p. 49). And the Congress gave the Philippine Islands their own separate monetary unit, the peso instead of the dollar, and their own separate coinage and currency system ("Foraker Act", *supra*, Secs. 76-79; Act of March 2, 1903, as amended; Appendix I, *infra*, pp. 50-51). And in framing the judicial system for the Philippines, no United States courts were instituted, and no United States Attorney. In Puerto Rico, as in the Territories, there is a United States District Court and a United States District Attorney under the supervision of the Attorney General of the United States (Organic Act for Puerto Rico, Sec. 41, c. 145, 39 Stat. 951, 965); and in Hawaii there is likewise a District Court which the Congress has recognized as "the United States District Court for Hawaii" (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 86, 31 Stat. 141, 158; and Par. "Second", Sec. 128(a) of the Judicial Code as amended by the Jurisdiction Act of February 13, 1925, c. 229, 43 Stat. 936). But in the Philippines there is no United States District Court, nor anything corresponding to it, and no United States District

Attorney. There is in those Islands but the one system of insular courts,— the local municipal courts, the Courts of First Instance, and the insular Supreme Court (Organic Act for the Philippine Islands, Act of August 29, 1916, c. 416, Secs. 26 and 27, 39 Stat. 545, 555).

And the customs service in the Philippine Islands is not under the jurisdiction of the Secretary of the Treasury. The insular collector of customs is, and from the beginning has been, an official of the insular government. (Tariff Act for the Philippine Islands, *supra*, Act of August 5, 1909, c. 8, Sec. 25, 36 Stat. 130, 177; *Wright, Auditor*, v. *Ynchausti*, 272 U. S. 640, 646-651).

E.—Philippine Islands.—Laws relating to revenue and taxation. And so also, as to the Philippine Islands, the distinctive purpose of the Congress was emphasized by the insertion of the *unusual second paragraph* in section 7 of the present Philippine Organic Act of August 29, 1916, (39 Stat. 545, 547; 48 U. S. Code 1005; Appendix I, *infra*, p. 48) by which, after giving the Legislature power "when not inconsistent with this Act, by due enactment" to "amend, alter, modify or repeal, any law, civil or criminal, continued in force by this Act as it may from time to time see fit", it is further expressly provided that:

> "*This power shall specifically extend,* with the limitation herein provided as to the tariff, *to all laws relating to revenue and taxation in effect in the Philippines.*"

That is a most unusual provision in a territorial organic act. No such power is given the Puerto Rican Legislature. The corresponding section of the Puerto Rican Organic Act is section 57 of that Act ("Jones Law" for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951, 968; 48 U. S. Code 735) containing almost word for word the same power granted the Philippine Legislature by the first paragraph of section 7 of the Philippine Act, "by due en-

actment to amend, alter, modify, or repeal, any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit", *but without any such power as that given the Philippine Legislature by the second paragraph of section 7 of the Philippine Act* "specifically" extending that Legislature's power over *"all laws relating to revenue and taxation in effect in the Philippines"*.

The omission of that clause from the Puerto Rican Act is very significant. The Philippine Act was approved August 29, 1916. The Puerto Rican Act was passed at the next following "short session" of the same Congress, and approved March 2, 1917. Both acts were introduced by Representative William A. Jones, chairman of the House Insular Affairs Committee, and both are popularly known by his name, the "Jones Law" for the Philippines, and the "Jones Law" for Puerto Rico, respectively.

Thus this broad extension of the powers granted to the Philippine Legislature by the express provision of this second paragraph of section 7 of the Philippine Act to amend or repeal "all laws relating to revenue and taxation in effect in the Philippines", was deliberately omitted from the powers given the Puerto Rican Legislature. That emphasizes the Congressional intention to leave the Philippines free to frame their own systems of revenue and taxation. In view of this provision of section 7 of the Philippine Organic Act, it seems plain that, even if the taxing section of the National Bank Act had ever gone into effect in the Philippines, then, being a "law relating to * * * taxation", it would have been subject to this express provision granting the Philippine Legislature the power to amend or repeal it; which was exercised by the contrary provisions of sections 1499 and 1502 of the Philippine Administrative Code of 1917 (Appendix I, *infra*, pp. 63-64) for taxing all banks in the Islands uniformly, under which the taxes here in question were levied.

F.—The underlying reason for all these differences that the Congress has thus consistently maintained between the

Philippine Islands on the one hand and the other Territories and territorial governments on the other, is plain from the preamble to the present Organic Act for those Islands ("Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545; *infra,* Appendix I, pp. 47-48) declaring,

> **"Whereas, it is, as it always has been, the purpose of the United States to withdraw their sovereignty over the Philippine Islands, and to recognize their independence as soon as a stable government can be established therein";**

and is emphasized both by the earlier resolution of the Senate when advising the ratification of the Treaty with Spain back in February, 1899 (*infra,* Appendix V, pp. 84-85), and by the recent Act offering independence to the Philippines (Act of March 24, 1934, c. 84, 48 Stat. 456; *infra,* Appendix V, p. 90), which has now been accepted by the Philippine Legislature and also by the Philippine people themselves at their recent plebiscite adopting the new Constitution for the Philippine Commonwealth,[11] so that the Philippine Islands are now on their way out from the jurisdiction of the United States and toward their own independent sovereignty.

G.—The provision in Section 1 of the "Foraker Act" of July 1, 1902, the former Organic Act for the Philippine Islands, that:

> "The provisions of Section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands,"

is in reality an affirmative declaration by the Congress of its will that the general statutory laws of the United States shall not run to the Philippine Islands.

Section 1891 of the Revised Statutes (*infra,* Appendix I, p. 47) is, as above noted (*ante,* p. 15), the section of the

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[11] The new Commonwealth Government is to be formally inaugurated at Manila on November 15, 1935.

Revised Statutes of 1873 and of 1878 which extends the statutory laws of the United States, generally, to the organized Territories. The express direction of the Congress contained in Section 1 of the "Foraker Act" of 1902 for the Philippines, that Section 1891 of the Revised Statutes should not run to the Philippine Islands, was, therefore, in reality *a direct affirmative expression of the Congressional will that the general statutory laws of the United States,* which run throughout the Union, and which, by Section 1891 of the Revised Statutes, likewise run generally to all the organized Territories, **should not run to the Philippine Islands.** This was the interpretation put upon that provision of the "Foraker Act" by the Attorney General, in his opinion holding that the Narcotic Drugs Act does not run to the Philippine Islands, in which he said:

> "* * * the provisions of Section 1 of the Act of July 1, 1902 (32 Stat. 691), in which Congress specifically withheld from the Philippine Islands the application of Section 1891 of the Revised Statutes, *thus expressing its intention that the laws of the United States should not apply to the Philippines unless the intention to that effect was clearly expressed."* (34 Ops. Atty. Gen. 550, 552-553, *re* Narcotic Drugs Act; *quoted more at length, infra,* pp. 25-26; *italics supplied*).

That is in direct antithesis to the contrary provision in the "Foraker Act" for Puerto Rico of April 12, 1900, that the laws of the United States not locally inapplicable *shall* run to that Island (c. 191, Sec. 14, 31 Stat. 77, 80; Appendix V, *infra,* p. 85). While this provision of the Philippine "Foraker Act" is in negative form, and is not expressed in as positive language as was afterwards done in Section 5 of the present Organic Act for those Islands, yet it expresses the same intention, that the statutory laws of the United States shall not, generally, run to those Islands; particularly when taken in connection with the fact that the Congress, in relation to the Philippine Islands, reverted

to its habit of the early days of the 19th Century (*ante*, Point I-B, pp. 14-15) of directing specifically which statutes should run to those Islands (*infra*, pp. 22-23, paragraph "H" of this Point; and Appendix IV, *infra*, pp. 80-83),—*with the clear implication that other statutes should not run there.*

The National Bank Act was a "law of the United States," in existence when the Philippine "Foraker Act" was passed in 1902. The Congress did not choose to direct that it should run there. It follows that it never did take effect in those Islands; and is not in force there. *And it is particularly noteworthy* that the only amendments to the taxing section of the National Bank Act (Sec. 41; R. S. 5219) enacted since the date of the Philippine "Foraker Act" of 1902, were enacted in 1923 and in 1926 respectively (Acts of March 4, 1923, 42 Stat. 1499; and March 25, 1926, 44 Stat. 223; Appendix I, *infra*, pp. 57-58), *both passed after the present Philippine Organic Act* of August 29, 1916, and neither of them specifically mentioning the Philippine Islands; *and that no amendment of the National Bank Act has ever specifically mentioned those Islands, or extended the Act there; thus again emphasizing the intention of the Congress that the National Bank Act should not run to those Islands.*

H.—Whenever the Congress has desired a statute of the United States to extend to the Philippine Islands, it has been its uniform policy specifically to direct that the particular statute shall run to and be in force in those Islands. Thus for example by Section 76 of the "Foraker Act" of July 1, 1902, it expressly extended "the laws of the United States relating to mints and coinage, so far as applicable", "to the coinage of said Islands" (39 Stat. at p. 710; Appendix I, *Infra*, p. 50); and by the Act of February 6, 1905, c. 454, 33 Stat. 698, the Congress directed that the provisions of Sections 5270 to 5277 of the Revised Statutes relating to extradition, "so far as applicable, shall apply to

the Philippine Islands"; and, again, by the Act of June 15, 1917, enacted during the war, that certain sections of the neutrality laws of the United States should be extended to the Philippine Islands (Act of June 15, 1917, c. 30, Title XIII, Sec. 2, 40 Stat. 217).[12] **But the Congress has never enacted any statute broadly extending the laws of the United States generally to the Islands in any way**, and, as illustrative of its policy toward the Islands, it has not usually included them in the recent emergency reconstruction and relief Acts passed during the past few years, although some of the provisions of a few of those Acts have been expressly extended to the Islands. Thus, for example, when the Congress determined to extend to the Philippine Islands the 15% cut in the salaries of insular officials appointed by the President, it specifically named those Islands in the Act, directing (Independent Offices Act of June 16, 1933, c. 101, Sec. 12, 48 Stat. 283, 307):

> "Sec. 12. From the date of the approval of this Act and until July 1, 1934, the compensation of all officers and employees of the insular possessions of the United States, *including the Philippine Islands*, which is now fixed by Acts of Congress * * *, is hereby reduced fifteen per centum:" (*Italics supplied*).

I.—In view of this established purpose of the Congress thus manifested (1) by its express direction in Section 5 of the present Organic Act for the Islands (*infra*, Appendix I, p. 48), that the statutory laws of the United States thereafter enacted shall not apply to the Philippines, except when they specifically so provide, "or it is so provided in this Act", (2) by its direction in Section 1 of the former

[12] Appendix I, *infra*, p. 52. And see also, as further illustrations, the various Acts cited by the Attorney General in his opinion relative to the Narcotic Drugs Act (quoted *infra*, pp. 25-26); and the collation in Appendix IV, *infra*, pp. 80-83), of examples of Acts specifically directed by the Congress to be in force in the Philippine Islands.

Organic Act of 1902 ("Foraker Act", *infra*, Appendix I, p. 47) that the section of the Revised Statutes, Sec. 1891, extending the laws of the United States to the Territories generally should not be in force in the Philippine Islands, and (3) by the practice of the Congress itself expressly to extend to those Islands by name or specific designation any federal statute which it desires to put into force there, **the Attorney General of the United States, in consonance with the established practice of most of the executive departments of the federal government, has uniformly held that federal statutes, which do not specifically name the Philippine Islands, do not extend to those Islands, even though they do contain general language extending them to the "insular possessions" or to "places" or "territories under the jurisdiction of the United States", so long as they fail specifically to name the Philippine Islands.** Thus, for example, the Attorney General has held that the Narcotic Drugs Act of May 26, 1922, c. 202, 42 Stat. 596, does not extend to the Philippine Islands, although Section 2(b) of that Act provides broadly:

> "That it is unlawful to import or bring any narcotic drugs into the United States *or any territory under its control or jurisdiction*" (*Italics supplied*);

and that the National Prohibition Act, the *Volstead Act* of October 28, 1919, c. 85, 41 Stat. 305, 307 *et seq.*, did not run to the Philippine Islands, for similar reasons, broad as its general language was; and, quite recently, that the National Industrial Recovery Act of June 16, 1933, c. 90, 48 Stat. 195, did not extend to the Philippine Islands, in spite of the broad language in Section 7(d) of that Act covering "the District of Columbia or any Territory of the United States", and "*any insular possession* or other place under the jurisdiction of the United States". (NARCOTIC DRUGS ACT, 34 Ops. Atty. Gen. 550, 551-553, October 17, 1925; NATIONAL PROHIBITION ACT, 32 Ops. Atty. Gen. 258, 259, June

24, 1920; NATIONAL INDUSTRIAL RECOVERY (39 Ops. Atty. Gen., Advance Sheets, Dec. 2, 1933).

In his opinion with reference to the Narcotic Drugs Act, holding that it does not run to the Philippine Islands, the Attorney General, after quoting the language of Section 2(b) of the Act,

> "That it is unlawful to import or bring any narcotic drug into the United States *or any territory under its control or jurisdiction*" (c. 202 Sec. 2(b), 42 Stat. 596; *italics supplied*),

said (34 Ops. Atty. Gen. 550, 551-553, *supra*):

> "While ordinarily such language might be construed as embracing the United States and all of its possessions, such interpretation is not permissible when the language is measured by the test laid down in the Act of August 29, 1916, above set forth. The Narcotic Drugs Import and Export Act will be searched in vain for any language disclosing that it 'specifically' provides that it shall apply to the Philippines. * * *
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> "ADDITIONAL SUPPORT FOR THE VIEWS ABOVE EXPRESSED IS TO BE FOUND IN WHAT MAY NOW BE REGARDED AS THE WELL SETTLED MANNER IN WHICH CONGRESS EXPRESSES ITS INTENTION WHEN IT DESIRES ANY OF THE FEDERAL LAWS TO BE OPERATIVE IN THE PHILIPPINES. In section 23 of the Income Tax Act of September 8, 1916 (39 Stat. 776), it is provided that 'the provisions of that Act shall extend to the Philippine Islands'. The Act also confers jurisdiction upon 'courts of the first instance of said Islands', and places the administration of the law so far as the Act is concerned upon the officers of these Islands. The so-called National Defense Act of June 15, 1917 (40 Stat. 217, 231), specifically confers upon the 'courts of first instance in the Philippine Islands' jurisdiction of the offenses under that Act committed within the Philippines. That Act also provides that the District Attorneys of the Philippine Islands 'shall have the powers and perform the duties provided in this Act for United States Attorneys.' In section 2 of the Narcotic Act of December 17, 1914 (38 Stat. 785,

787), is it provided that in 'the Philippine Islands administration of this Act' shall be looked after by the local internal revenue officers. The Act further provides that 'the courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said Islands'. In the Immigration Act of February 5, 1917 (39 Stat. 874), it is provided that 'this Act shall be enforced in the Philippine Islands by officers of the general government thereof.' In the Trading with the Enemy Act of October 6, 1917 (40 Stat. 411, 425), it is provided that the several courts of first instance in the Philippine Islands shall have jurisdiction of offenses committed under the Act within their territory. These several illustrations, considered in the light of restrictive provisions of Section 5 of the Act of August 29, 1916, *supra,* seem to forbid the extension of the Narcotic Drugs Import and Export Act to the Philippines. Also pertinent is the opinion of my predecessor (32 Ops. 258), holding that section 5 of the Act of August 29, 1916, *supra,* prevented the operation of the liquor laws of the United States in the Philippines, although those laws otherwise might fairly have been interpreted to apply to such Islands.

"In conclusion, it seems proper to state that even though the correct interpretation of the Narcotic Drugs Import and Export Act were more doubtful than I find it to be, it would nevertheless be necessary to resolve that doubt against the application of the law to the Philippines **in view not only of the provisions of section 5 of the Act of August 29, 1916, supra, but also because of the provisions in section 1 of the Act of July 1, 1902 (32 Stat. 691), in which Congress specifically withheld from the Philippine Islands the application of section 1891 of the Revised Statutes, thus expressing its intention that the laws of the United States should not apply to the Philippines unless the intention to that effect was clearly expressed.** It may also be added that there appears to be nothing in the legislative history of the Narcotic Drugs Import and Export Act which discloses any specific intention that said laws should apply in the Philippines."

Since the Congress has never seen fit to extend either the National Bank Act or the Federal Reserve Act, nor any part of either of those Acts, to the Philippine Islands, it follows that neither of those Acts is or ever has been in force there. And of course, *a fortiori*, that neither Section 41 of the National Bank Act, its taxing Section (now R. S. 5219 as amended), nor Section 25 of the Federal Reserve Act authorizing the establishment of branches of national banks in "dependencies or insular possessions of the United States" by permission of the Federal Reserve Board, is in force in those Islands, or ever has been.

J.—Neither the taxing section of the National Bank Act nor any other part of that Act has ever been extended to the Philippine Islands.

The Act was in effect in the United States long before the American occupation of the Islands. It was originally enacted in 1864, and was carried into Section 5219 of the Revised Statutes in 1873 (*ante*, p. 15). It extended to the organized and "incorporated" Territories of the United States, both by virtue of Section 1891 of the Revised Statutes and also because by Section 6 of the Act itself the Congress indicated its intention that a national bank might be organized in any "territory" or in a "district" (The District of Columbia), as well as in any "state". *Talbott* v. *Silver Bow County Commissioners*, 139 U. S. 428, 443-444, decided March 30, 1891, before there were any insular possessions.[13]

This taxing section, Section 41 of the original Act of

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[13] Where this court, speaking by Mr. JUSTICE BREWER, said:

> "Further, it is a general rule in the construction of statutes that when in the earlier and declaratory section the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent sec-

June 3, 1864, carried into Section 5219 of the Revised Statutes, has been amended twice. *Both of those amendments have been made since the enactment of the present Organic Act for the Philippine Islands.* One of them was by the Act of March 4, 1923, c. 267, 42 Stat. 1499, and the other by the Act of March 25, 1926, c. 88, 44 Stat. 223 (*ante*, p. 22; Appendix I, *infra*, pp. 57-58. *In neither of those amendments were the Philippine Islands specifically mentioned.* And, consequently, the Act as it now stands does not specifically mention those Islands (*infra*, pp. 57-58). It clearly follows that it has never been the intention of the Congress to extend that statute to those Islands.

K.—Neither Section 25 of the Federal Reserve Act, nor any other part of that Act, has ever been extended to the Philippine Islands. As to the Federal Reserve Act, including particularly its Section 25 authorizing the Federal Reserve Board to approve applications of national banks of the United States to establish so-called "foreign branches" outside of the States and Territories and the District of Columbia, — that Act was first passed on December 23, 1913 (c. 6. 38 Stat. 251, 273, Appendix I, *infra*, pp. 58-59), and Section 25 as then enacted simply authorized the Federal Reserve Board to approve the application of any national banking association possessing a capital and surplus of $1,000,000 or more *"to establish branches in foreign countries or dependen-*

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tion to restate or use words and expressions which shall fully disclose the extent of those powers and privileges; * * *. So, when, in the sections providing for the incorporation of national banks, the thought of their existence in States and Territories alike is affirmed, the character and extent of the banking system are disclosed; and subsequent sections must be taken to be in support, rather than in derogation, of the national feature of this national system."

But the Congress has never extended this "national system" to the Philippines.

cies of the United States''. There was no specific reference to the Philippine Islands. **But the significant thing is that only nine days after the enactment of the "Jones Law", the present Organic Act for the Philippine Islands** of August 29, 1916, with its Section 5, specifically prescribing as above quoted, *''That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act''* (39 Stat. 545, 547; *infra*, Appendix I, p. 48), THE CONGRESS AMENDED SECTION 25 OF THE FEDERAL RESERVE ACT on September 7, 1916,[14] by **inserting** the words **"or insular possessions"** after the word "dependencies", *and made no other change in the phraseology of that section of the Federal Reserve Act*. **And made no reference to the Philippine Islands.**

This action of the Congress, in making that amendment in that way, only nine days after the enactment of the new Organic Act for the Philippine Islands, without mentioning the Philippine Islands in the amendment, seems to be the very plainest kind of an expression of its will by the Congress not to extend that section of the Federal Reserve Act to those Islands.

Plainly, had it been its will that that section of the Federal Reserve Act should run there, it surely would have expressly mentioned the Philippine Islands when amending the section only nine days after so definitely laying down the rule in Section 5 of the new Organic Act for the Islands on August 29, 1916, that no law thereafter enacted should run to those Islands, unless it specifically so declared;—instead of thus amending Section 25 only nine days later, and saying merely *''insular possessions''* and *''dependencies''*, as it did.[15] And again, when three years

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[14] Act of September 7, 1916, c. 461, 39 Stat. 752, 755; Appendix I, *infra*, p. 59.

[15] And that necessary conclusion is still further rein-

afterwards it once more amended Section 25 of the Federal Reserve Act, by Section 2 of the Act of September 17, 1919 (c. 60, 41 Stat. 285, 286; 12 U. S. Code, 601; Appendix I, *infra*, pp. 59-60), it still retained the same phraseology "*in foreign countries or dependencies or insular possessions of the United States*", **and once more saw fit not specifically to mention the Philippine Islands, and not specifically to extend the Act to those Islands.**

The conclusion is irresistible that it was the deliberate intent of the Congress not to extend the Federal Reserve Act to those Islands. This conclusion is again reinforced when it is borne in mind: (1) That, as above pointed out, the Congress had theretofore authorized the Philippine government to guarantee the income of the Philippine Agricultural Bank, afterwards merged into the Philippine National Bank, owned and directly controlled by the Philippine Government, a truly national bank for the Islands, Appendices I and III, *infra*, pp. 52-53 and 72; (2) That the Congress must be presumed to have been aware of the existence of the Philippine National Bank and that it was practically a branch of the insular government (Philippine Acts 2612, 2747, 2938, Appendix III, *infra*, pp. 71-79, and cognate Acts); and (3) That, administratively, the Federal Reserve Act was apparently regarded, at least for a long time, as not authorizing branches of national banks in the Islands. At any rate it does not appear that the Federal Reserve Board ever licensed any branches of national banks

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forced by the fact that, on the very next following day, September 8, 1916, the Congress actually did specifically direct, in Section 23 of the Income Tax Act, that the Income Tax Act should run to the Philippine Islands. (Act of September 8, 1916, c. 463, Title I, Sec. 23, 39 Stat. 756, 776, cited in the Attorney General's opinion concerning the Narcotic Drugs Act, *ante*, p. 25). *The Congress was carefully discriminating between the Acts which it intended should run to those Islands, and those which it intended should not run there.*

in the Philippine Islands during all the years since the Act was first passed in 1913, until the year 1930 when it approved the application of the respondent here, the National City Bank of New York, for the establishment of these branches in Manila and Cebu (R. 42-43).

L.—It thus appears that the situation as to the Federal Reserve Act not running to the Philippines is wholly analogous to that with relation to the National Bank Act.

It is true that the Federal Reserve Act was originally enacted in 1913, before the present Organic Act for the Philippines of August 29, 1916, and that section 25 of the Federal Reserve Act as originally enacted in 1913 (c. 6, 38 Stat. 251, 273; Appendix I, *infra*, p. 58) contained a provision authorizing the Federal Reserve Board to permit national banks to establish branches "*in foreign countries or dependencies* of the United States for the furtherance of the foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States." **But it is also true that (1)** when the Federal Reserve Act was enacted in 1913 there was already in force the provision of the first section of the Foraker Act of 1902 for the Philippines, which was the Organic Act for those Islands in force at that time, containing the provision that section 1891 of the Revised Statutes should not run to the Philippine Islands, thereby clearly expressing the will of the Congress that the statutory laws of the United States should, generally, not run to those Islands; **that (2)** the Federal Reserve Act did not specifically mention the Philippine Islands, and there is nothing either in that Act itself or in any other Act of the Congress, specifically directing that it should run there; **that (3)** the Congress had already six years before that time, by the Act of March 4, 1907, c. 2908, 34 Stat. 1282 (*infra*, Appendix I, pp. 52-53), provided for the establishment of an official government bank in the Philippines, the Agricultural Bank, and had authorized the Philippine government to guarantee an

income of not exceeding 4 per cent upon the capital stock of that bank (afterwards converted into the present Philippine National Bank which is "subrogated to all of the rights, actions and obligations of the Agricultural Bank"; Sec. 6, Philippine Act No. 2612 creating the Philippine National Bank, Feb. 4, 1916, and is almost wholly government owned (*ante*, p. 30, and Appendix III, *infra*, pp. 71, 72, 77-78, 79); **and that (4)** no branch of any national bank was ever authorized by the Federal Reserve Board at any time prior to the amendment of Section 25 of the Federal Reserve Act by the Act of September 9, 1916 (or ever at any time, prior to the permit of 1930 to the present respondent bank to establish branches in Manila and Cebu).

It follows that (1) there was in Section 25 of the Federal Reserve Act as originally enacted in 1913, no sufficiently clear expression by the Congress of any specific intent that it should run to the Philippine Islands to take it out of the general rule theretofore established by the Congress by the first section of the Foraker Act then in force as the Organic Act for the Philippines, that the general statutory laws of the United States should not extend to those Islands; **and (2) that** it seems to have been the accepted administrative interpretation of the Act that it did not run there, since the Federal Reserve Board gave no license to establish branches of national banks in those Islands prior to the amendment of Section 25 of the Federal Reserve Act by the Act of September 7, 1916.

Therefore, no such license having ever been actually granted prior to September 7, 1916, any possible question that might have been raised before that date as to whether or not, under the original Act of 1913, a Philippine branch of a national bank of the United States might validly have been established prior to the amendment of September 7, 1916, is wholly academic. It was not in fact done; no national bank attempted to establish a branch in those Islands during that period. By the amendatory act of September 7,

1916, only nine days after the new Organic Act for the Philippines, making the phraseology of Section 25 of the Federal Reserve Act read, in general terms, "dependencies or insular possessions", *without specifically mentioning the Philippine Islands,* the Congress deliberately expressed its will (in connection with the provision of Section 5 of the then new Philippine Organic Act adopted only nine days previously) that that section of the Federal Reserve Act should not run to those Islands.

And did so again, three years afterwards, by the second amendatory act of 1919, again omitting to make any specific reference to those Islands (*supra,* pp. 29-30). In any event, therefore, Section 25 of the Federal Reserve Act has not been in effect in the Philippines since September 9, 1916; was not in effect there in January 1930 when the Federal Reserve Board gave its license (R. 42-43) purporting to permit this respondent bank to establish branches in Manila and Cebu; has never been in force in those Islands at any time since; and is not in force there now. It follows that the Federal Reserve Board's license of January 23, 1930 (R. 42-43) to the respondent bank was simply void. That the respondent bank's branches in Manila and Cebu are not in any sense statutory branches of a national bank of the United States under the Federal Reserve Act; and that whatever right to existence they may have in the Islands, or to continued toleration there, they owe wholly to Philippine law. They are, therefore, wholly subject to the Philippine laws, and to taxation in accordance with those laws. So far as the validity of the taxes here involved is concerned, their connection with the National City Bank of New York is wholly incidental, and of no legal significance whatever.

POINT II

There is no federal statute limiting the general taxing power of the insular government over Philippine branches of national banks of the United States, or over any other banks in those islands, ex-

cept the provision of Section 3 of the Organic Act that "the rule of taxation in said islands shall be uniform".

As said above (Point I, *ante*, pp. 27-28), the taxing section of the National Bank Act is not in force in those Islands, and never has been. There is no other federal statute in force there relative to the taxation of banks, either of branches of national banks of the United States or other banks, *except* the provisions of the Organic Act of the Congress endowing the Philippine Legislature with general legislative and taxing powers,[16] subject only, so far as relates to anything pertinent here, to the limitation above quoted in Section 3 of the Organic Act, "that the rule of taxation in said islands shall be uniform" (Appendix I, *infra*, p. 48).

It has never been even suggested in this case that the taxes here involved violate that rule of uniformity in any way. There is, therefore, no federal statute in force in the Islands prohibiting the insular Legislature from providing for, — or the insular government from levying and collecting, — the taxes here involved.

POINT III

There is no implied prohibition preventing the Philippine Government from levying these taxes, or collecting them.

A.—The taxes involved are the "capital taxes" and the "deposits taxes". No question has ever been made in this case but that both these taxes were levied and collected in strict accordance with the provisions of the Philippine statutes.[17]

B.—Since the taxing section of the National Bank Act does not run to the Philippine Islands, as above pointed out in the preceding Points of this argument, and since there is

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[16] Organic Act, Secs. 6, 7, 8, 10, 11 and 12; *infra*, Appendix I, pp. 48-49.

[17] Administrative Code, Secs. 1499 and 1502, *infra*, Appendix I, pp. 63-64.

no other federal statute expressly limiting in any way the power of the Philippine Legislature to levy these taxes in the exercise of the general legislative powers and taxing powers given it by the Organic Act,[18] it necessarily follows that the taxes here involved are valid, *unless* there is some implied prohibition or limitation against or upon the power of the Philippine Legislature to impose them. *The only possible such implied prohibition or limitation that has been suggested in this case is a possible presumption that the Congress did not intend* that "a derivative sovereignty like the government of the Philippine Islands could tax the instrumentalities of the very government which brought it into existence". That was the basis, at least in part, of the decision of the majority of the Philippine Supreme Court holding these taxes beyond the power of the Philippine government (R. 153). But, as the insular Supreme Court there recognized, the Congress may, of course, give its consent. **It comes back, therefore, to the question, simply, what was the intention of the Congress?** The presumption that a derivative sovereignty is not intended to tax instrumentalities of the superior sovereign, is after all only a rebuttable presumption; and, like other rebuttable presumptions, is to be used only as an aid in arriving at the true facts,—here as an aid in arriving at the real intent of the Congress.

C.—We are not unmindful that this court said in the Puerto Rican case, *Domenech, Treasurer,* v. *National City Bank, supra,* 294 U. S. 199, 205;

> "But like a State, though for a different reason, such an agency may not tax a federal instrumentality. * * *. A Territory or a possession may not do so because the dependency may not tax its sovereign. True the Congress may consent to such taxation; but the grant to the Island of a general power to tax should not be construed as a consent. Nothing less than an

[18] *Infra,* Appendix I, pp. 48-49).

> Act of Congress clearly and explicitly conferring the privilege will suffice. Not only do we find no such statutory consent but we are confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico'',

but, as appears from the above quotation, *that was said in relation to a very different situation from that presented here.*

As there said, in the Puerto Rican case, the court was "confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico."

But that situation was directly opposite, or contrary, to that with which we are dealing here; where, as we have already shown in the preceding Points of this argument, that statute, R. S. 5219, *does not run in the Philippines,* and the Congressional declaration in the Philippine Organic Act is directly to the contrary of that in the Puerto Rican Act; and is, that statutes of the United States *shall not apply* in the Philippine Islands "except when they specifically so provide, or it is so provided in this Act"; that is to say, unless the particular Act has been specifically extended to those Islands by the Congress,—which is not the case with either the National Bank Act or the Federal Reserve Act.

D.—Coming back then to the question of the actual intent of the Congress,—whether or not it was the Congressional intent that the presumption that a subordinate sovereignty should not tax instrumentalities of the superior sovereign should apply to these bank taxes,—and picking up all of the pertinent Acts of the Congress, as we would a deed, "by the four corners", and looking them over together, we find:

(1) That the Congress has expressed its plain intent that the National Bank Act shall not be in force in the Philippine Islands; and, therefore, that its taxing Section 41, now R. S. 5219, shall not apply there; that neither the National Bank Act nor the Federal Reserve Act has been extended to those Islands;

(2) That, in the Philippines, the Congress has established or authorized systems of laws that are different in many ways from those in force in the Territories and in the other insular possessions and in the States,—a different monetary system, different tariff laws, different immigration laws, different customs laws, different navigation laws, a different judicial system;—and in particular, with relation to the matter here immediately at hand, that it has authorized the Philippine government to guarantee the income of the Agricultural Bank,—a kind of national bank for the Philippine Islands, now merged into the government owned Philippine National Bank, a bank which throughout its history has been very truly and really a government institution of the Philippine Islands,—practically a branch of the insular government;

(3) That the Congress has given full legislative and taxing powers to the Philippine Legislature, unrestricted by any kind of express limitation with reference to imposing taxes on banks or on other property, *except* by the limitation in Section 3 of the Organic Act, "That the rule of taxation in said islands shall be uniform";

(4) That, with relation to revenue and taxation, the Congress inserted in Section 7 of the present Organic Act for the Philippine Islands, a clause,—*very unusual in a Territorial Organic Act, and wholly omitted from the corresponding section of the Organic Act for Puerto Rico,*— "specifically" extending the powers of the Philippine Legislature with reference to amending, altering, modifying or repealing *"any law, civil or criminal, continued in force by this Act"*,

"to all laws relating to revenue *and taxation* in effect in the Philippines" (*ante*, pp. 18-19; Appendix I, *infra*, p. 48; *italics supplied*);

(5) That by Section 6 of the present Organic Act,[19] enacted August 29, 1916, the Congress enacted that "**the laws now in force in the Philippines shall continue in force and effect**, except as altered, amended, or modified herein", without making any modification or alteration or limitation whatever as to the power of the Philippine Legislature in relation to the taxation of banks; and, further, that the Congress must be conclusively presumed to have been aware, when it enacted that Section 6 of the Organic Act, that among the laws then in force in the Philippine Islands, which it was thus ratifying, were Sections 1654 and 1657 of the Administrative Code of February 24, 1916, Act No. 2657 of the Philippine Legislature,[20] which contained the same provisions afterwards carried forward by Philippine Act No. 2711, March 10, 1917, into Sections 1499 and 1502 of the present Administrative Code of the Islands, under which the taxes here involved were levied;[21] and also Act 2612, Appendix III, *infra*, pp. 71-76, enacted February 4, 1916, creating the Philippine National Bank and merging (Sec. 6, p. 72, *infra*) the Philippine Government Agricultural Bank into it;

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[19] *Infra*, Appendix I, p. 48.

[20] Appendix I, *infra*, pp. 64-65.

[21] Appendix I, *infra*, pp. 63-64. The present Administrative Code was enacted as an amendment to the former Administrative Code of 1916 in force when the present Organic Act for the Islands was passed by the Congress. The enacting clause of the present Administrative Code reads:

"For the purpose of adapting it to the Jones Law and the Reorganization Act, Act No. 2657, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:" (*Infra*, p. 62).

(6) That by Section 19 of the Organic Act, the Congress directed (39 Stat. at p. 551; *infra*, Appendix I, p. 49):

> "All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same";

and that although the present Administrative Code of the Philippine Islands, including these sections 1499 and 1502, reenacting as above pointed out sections 1654 and 1657 of the former Administrative Code, was itself enacted by the Philippine Legislature on March 10, 1917, only six months after the Organic Act was passed, and was expressly enacted, as is recited in its enacting clause, "for the purpose of adapting it to the Jones Law", the Organic Act, nevertheless the Congress has never seen fit to annul either of these sections or any of the kindred sections of the Administrative Code relating to the taxation of banks, which is at least "some evidence" that they met with Congressional approval, or were in accord with the policy and the intent of the Congress. *Clinton* vs. *Englebrecht*, 13 Wall. (80 U. S.) 434, 446; *Springer* vs. *Philippine Islands*, 277 U. S. 189, 208.

(7) That the Congress must be presumed to have been aware that, so long as it refrained from extending the taxing section of the National Bank Act to the Philippine Islands, the result was that, *unless* it was its intention and it was to be understood as leaving the Philippine Legislature unhampered to exercise its taxing powers uniformly as to all banks in the Islands including any branches of national banks established there, it would necessarily follow that the Philippine Legislature could not impose any taxes of any kind whatever upon such Philippine branches of United States national banks (if they could validly be established there at all), either income taxes or real estate taxes or any other taxes of any kind; since, in the absence

of the directions contained in the taxing section of the National Bank Act, there is no provision anywhere in the federal statutes authorizing the Philippine Legislature to levy one kind of taxes, but not another kind, upon branches of national banks established in the Islands, and such branches must either be wholly tax-free or else wholly subject to the taxing power given the Legislature by the Organic Act; and

(8) That if such national bank branches were to be construed to have such complete tax exemption in the Islands, it would give them such a business advantage as practically to yield them a monopoly of the banking business in the Islands, and would also necessarily

(9) Very greatly hamper the business, and greatly injure the income, of the Philippine National Bank, the government owned successor of the Agricultural Bank of the Islands, the income of which the Congress had expressly authorized the Philippine government to guarantee, which is practically an arm of the Philippine government; and

(10) That, as to banks in the Islands, it *would utterly destroy the uniformity of taxation which the Congress has expressly enjoined* by the clause in Section 3 of the Organic Act for the Philippines above quoted, "That the rule of taxation in said Islands shall be uniform".

THOSE ARE THE THINGS WHICH WE FIND WHEN WE PICK UP THE PERTINENT LEGISLATION OF THE CONGRESS "BY THE FOUR CORNERS" AND EXAMINE IT. There is one further consideration to be borne in mind, viz:

(11) That, after all, the usual *presumption* that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a Territory, or of an insular possession, *applies with but limited force in the case of a bank, which is primarily a corporation for profit, and is only secondarily or in a limited sense, an agency of the federal*

government in some of its fiscal operations. As this court said in *Talbott* v. *Silver Bow County, supra,* 139 U. S. 438, 445-446;

> "A bank is an institution organized for private business, and with a view to individual profit, although it may serve a public purpose and such public purpose justify its creation."

Now, taking all those things into consideration, what was the real Congressional intent? Are we blindly to follow a presumption against its being intended that a subordinate sovereignty shall tax the superior sovereign, or its instrumentalities of any kind? Or, under these circumstances, does that presumption accord with what appears to have been the real intent of the Congress? Plainly it does not. The whole course of the Congressional legislation here involved rebuts that presumption as applied to these taxes levied by authority of the Philippine Legislature upon these banks by virtue of the general legislative and taxing powers with which the Congress has endowed that Legislature. The contrary conclusion would lead to results which the Congress cannot have intended.

If the Congress had intended to limit the taxing powers of the insular Legislature with respect to any banks established in the Islands,—whether branches of national banks or others,—it would have done so in express terms, either by expressly extending the National Bank Act with its taxing section to those Islands, as it has specifically extended various other Acts to the Islands when it desired them to become effective there; or else it would have enacted some other positive legislation definitely limiting and defining the insular taxing powers with respect to these banks in the Islands. *It cannot have intended to leave them wholly tax-free,* as is the necessary result as the statute now stands, *unless* they are subject to the general taxing powers of the Philippine Legislature. Nor is it to be presumed that the Congress intended, by mere implication, so widely to de-

part from the rule of uniformity in taxation in the Islands which it had itself expressly prescribed in Section 3 of the Organic Act; nor so seriously to injure the established Philippine National Bank almost wholly owned by the insular government, the successor to the Agricultural Bank which the Congress itself had manifestly intended to foster as a local national fiscal institution for the Islands by the provision of the Act of March 4, 1907, c. 2908, 34 Stat. 1282, *supra*, quoted *infra*, pp. 52-53, Appendix I, authorizing the insular government to guarantee its income.[22]

And these conclusions gain redoubled force when it is borne in mind that the Congress has not even extended the provisions in the Federal Reserve Act,—particularly has not extended those of Section 25 of that Act,—to the Islands; and, therefore, has never authorized the establishment in those Islands of branches of United States national banks at all. (See Point V, *infra*, pp. 44-46).

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[22] The Philippine National Bank, the government fiscal institution of the Islands, is practically all owned by the Philippine government, and almost a part of that government. This court summarized its organization and ownership in *Springer and Agoncillo* v. *Philippine Islands, supra*, 277 U. S. 189, 198, as follows:

> "The National Bank was created by Act 2612, approved February 4, 1916, subsequently amended by Act 2747, approved February 20, 1918, and Act 2938, approved January 30, 1921. The authorized capital of the bank, as finally fixed, was 10,000,000 pesos, consisting of 100,000 shares, of which, in pursuance of the legislative provisions, the Philippine Government acquired and owns 97,332 shares, the remainder being held by private persons. By the original act the voting power of the government-owned stock was vested exclusively in the Governor-General, but by the amended acts now in force that power was 'vested exclusively in a board, the short title of which shall be "Board of Control", composed of the Governor-General, the President of the Senate, and the Speaker of

POINT IV

The Congress, by Section 6 of the present Organic Act for the Philippines, expressly ratified the sections of the Philippine Administrative Code under which the taxes here involved were imposed.

As already noted (*supra*, p. 38) the sections of the present Administrative Code of the Philippine Islands under which the taxes here in question,—"capital taxes" and "deposits taxes",—were levied, are almost literal re-enactments of the corresponding sections of the former Philippine Administrative Code of 1916 which was in force in the Islands on August 29, 1916, when the Organic Act was enacted. The sections of the present Administrative Code, Act No. 2711, approved March 10, 1917, under which these taxes were levied, are Sections 1499 and 1502. The corresponding sections of the former Administrative Code of 1916, Act No. 2657, effective July 1, 1916, were Sections 1654 and 1657. The sections of the present Administrative Code are printed in the Appendix (*infra*, pp. 63-64), and the corresponding sections of the former Administrative Code of 1916 are likewise in the same Appendix I, *infra*, pp. 64-65. **The Administrative Code of 1916 had been enacted by the Philippine Legislature on February 24, 1916, and had gone into effect in the Islands on July 1, 1916, only one month and twenty-nine days before the Congress enacted the "Jones Law" the (then) new Organic Act for the Philippines.** Necessarily such an important Act as the then so recently adopted Administrative Code of the Islands of 1916

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the House of Representatives.' The Governor-General was also divested of the power of appointment of the President and Vice-President of the bank, originally vested in him, and their election was authorized to be made by the directors from among their own number."

This court there held that the Governor General could not be supplanted by the legislative power in the exercise of the executive power of control of the Philippine National Bank. (*Pertinent parts of the Acts are in Appendix III, infra*, pp. 71-79.)

was in the minds of the members of the Congressional committee framing the new Organic Act; and, as it must be conclusively presumed, was in the minds of the Congress when they enacted Section 6 of the new Organic Act on August 29, 1916, expressly providing (39 Stat. at p. 547; Appendix I, *infra*, p. 48):

> "That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States",

without making any exception or limitation whatever as to those Sections 1654 and 1657 of the Administrative Code of 1916 which was then in force in the Islands. **This was, therefore, an express provision by the Congress that these sections of the Administrative Code as they then stood should "continue in force and effect" in the Islands until changed by the legislative authority "herein provided",—the Philippine Legislature,—or by Act of Congress.** Those sections were carried forward without any substantial change whatever into the present Administrative Code, still in force. They are thus, in effect, Acts of the Congress itself.

POINT V

There is no Federal statute authorizing the establishment of branches of United States national banks in the Philippine Islands.

As above pointed out in Point I hereof, Section 25 [22] of the Federal Reserve Act authorizing the Federal Reserve Board to permit establishment of branches of national banks in foreign countries and in "dependencies or insular possessions" of the United States does not expressly mention the Philippine Islands, and has never been expressly extended to those Islands; and, therefore, is not

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[22] As amended by the Acts of September 7, 1916, and September 17, 1919; Appendix I, *infra*, pp. 59-60.

in force there, any more than is the taxing section of the National Bank Act, or any other part of the National Bank Act, or any other statute of the United States not specifically mentioning those Islands and not specifically extended thereto by any Act of Congress.[24]

It seems necessarily to follow that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and Cebu in the Islands which was offered in evidence by the bank in this case (R. 42-43), **is wholly void, of no effect whatever, and gives no authority for the establishment or existence of those branches in the Philippine Islands.** Whatever else those so-called "branches" of the National City Bank in the Philippine Islands may really be,—if there is any legal authority whatever for their existence at all,—**they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other act of the United States.** They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the Islands, or as *de facto* domestic banks of the Islands existing and carrying on business there under Philippine law,—in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license from the Federal Reserve Board; since the Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be established outside of the continental United States,—or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended; which does not authorize such a branch in the Philippine Islands, because the Act does not

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[24] Point I, paragraphs "K" and "L", *ante*, pp. 28-33.

expressly mention those Islands, and it has never been extended there.

As above pointed out, it does not appear that the Federal Reserve Board ever licensed any branches of national banks to be established in the Philippine Islands during all of the years from the enactment of the Federal Reserve Act until this license was granted in 1930 for these Manila and Cebu branches of this respondent, the National City Bank of New York.

CONCLUSION

There is no federal limitation whatever preventing the Philippine government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; the taxes are valid; the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila are wrong, and should be reversed and the case remanded with directions to dismiss the action at the plaintiff's bank's costs.

Respectfully submitted,

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APPENDICES

Appendix I. Statutes, Federal and Philippine.

Appendix II. Resume of Territorial Organic Acts.

Appendix III. Philippine National Bank. — Statutes.

Appendix IV. Acts of Congress specifically extending certain Acts to the Philippine Islands from time to time.

Appendix V. Congressional legislation. — Opposite Congressional policies with respect to Puerto Rico, and to the Philippines.

APPENDIX I

STATUTORY PROVISIONS

FEDERAL:

(1) The former Organic Act for the Philippine Islands, the "Foraker Act" (superseded by the "Jones Law" of August 29, 1916, the present Organic Act) provided in the last sentence of its first section (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691):

> "The provisions of Section 1891 of the Revised Statutes of 1878[1] shall not apply to the Philippine Islands."

(2) The present Organic Act for the Philippine Islands, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, provides:

Preamble

> "Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and
>
> Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and
>
> Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the rights of

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[1] Section 1891 of the Revised Statutes provides:

> "Sec. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States."

sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibility and enjoy all the privileges of complete independence: Therefore"

Legislative and Taxing Powers

"Sec. 3. That * * *.

"That * * *.

"That the rule of taxation in said islands shall be uniform."

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

"Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended or repealed by the legislative authority herein provided or by Act of Congress of the United States."

"Sec. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

"This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines."

"Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

"Sec. 10. That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by the laws of the Congress of the United States; *Provided,* That tariff acts or acts amendatory to the tariff of the Philippine Islands shall

not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: *Provided further,* That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved."

"Sec. 11. That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit:"

"Sec. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated 'The Philippine Legislature': * * *."

"Sec. 19. That * * *.

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same."[2]

"Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect."

[2] Repealed May 29, 1928, Public 611, 70th Congress, c. 901, 45 Stat. 986, 996. Reinstated by Public 841, 70th Congress, 2nd Session, February 28, 1929, c. 364, 45 Stat. 1348.

(3) The first Organic Act for the Islands, the "Foraker Act", also provided (Secs. 76, 77 and 79, Act of July 1, 1902, *supra*, 39 Stat. at p. 710; 48 U. S. Code (1141-1146):

> "Sec. 76. That the government of the Philippine Islands is hereby authorized to establish a mint at the City of Manila, in said Islands, for coinage purposes, and the coins hereinafter authorized may be coined at said mint. And the said government is hereby authorized to enact laws necessary for such establishment: *Provided*, That the laws of the United States relating to mints and coinage, so far as applicable, are hereby extended to the coinage of said Islands.
>
> "Sec. 77.[3] That the government of the Philippine Islands is authorized to coin for use in said Islands a coin of the denomination of 50 centavos * * *, a coin of the denomination of 20 centavos * * *, and a coin of the denomination of 10 centavos * * *; and the standard of said silver coins shall be such that of one thousand parts, by weight, nine hundred shall be * * *.
>
> "Sec. 79. That the government of the Philippine Islands is also authorized to issue minor coins of the denominations of * * *."

(4) By the Act of March 2, 1903, c. 980, 32 Stat. 952, "An Act To establish a standard of value and to provide for a coinage system in the Philippine Islands", the Congress established an entirely separate system of coinage and currency for the Islands. Pertinent provisions are:

> (Section 1) "That the unit of value in the Philippine Islands shall be the gold peso consisting of * * * shall be legal tender for all debts, public and private, in the Philippine Islands."
>
> "Sec. 2. That in addition to the coinage author-

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[3] As amended by Sec. 4 of the Act of Congress of March 2, 1903, c. 980, 32 Stat. 952, 953.

ized for use in the Philippine Islands by the Act of July 1, 1902" (the "Foraker Act", first Organic Act for the Islands, *supra*) "the government of the Philippine Islands is authorized to coin to an amount not exceeding seventy-five million pesos for use in said islands, a silver coin of the denomination of one peso and of the weight * * *.

"Sec. 3. That the silver peso authorized by this Act shall be legal tender in the Philippine Islands * * *."

"Sec. 8." (as amended by Sec. 2, Act of February 6, 1905, and by the Act of June 23, 1906). "That the Treasurer of the Philippine Islands is hereby authorized, in his discretion, to receive in the Treasury of the government of the said islands or any of its branches deposits of the standard silver coins of one peso authorized by this Act to be coined, in sums of not less than twenty pesos, Philippine currency, and to issue certificates therefor in denominations of * * *. Such certificates shall be receivable for customs, taxes, and for all public dues in the Philippine Islands * * *, and when held by any banking association in said islands may be counted as a part of its lawful reserve * * *: *Provided further,* that the amount of gold coin held in such reserve shall not at any time exceed sixty per centum of the total amount of certificates outstanding."

(5) By the Act of February 9, 1903, c. 529, 32 Stat. 806, it was provided:

"That the provisions of Section 1014 of the Revised Statutes, so far as applicable shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States of any fugitive from justice charged with the commission of any crime or offense against the United States. Such fugitive may, by any judge or magistrate of the Philippine Islands, * * * be arrested and * * *."

"Sec. 2. That the provisions of Sections 5278 and 5279 of the Revised Statutes, so far as applicable, shall apply to the Philippine Islands, which, for the purposes of said sections, shall be deemed a Territory within the meaning thereof."

(6) By the Act of February 6, 1905, c. 454, 33 Stat. 698, entitled "*An Act to Extend Certain Provisions of the Revised Statutes of the United States to the Philippine Islands*", it was provided:

"That the provisions of Sections 5270, 5271, 5272, 5273, 5274, 5275, 5276, and 5277 of the Revised Statutes (as amended by the Act approved August 3, 1882), so far as applicable shall apply to the Philippine Islands for the arrest and removal therefrom of any fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign nations, and for the delivery by a foreign government of any person accused of a crime committed within the jurisdiction of the Philippine Islands."

"Sec. 2. That the provisions of Sections 5409 and 5410 of the Revised Statutes are hereby made applicable to proceedings in extradition from the Philippine Islands, either to the United States * * *, or to foreign countries under the provisions of this Act."

(7) By the Act of January 18, 1907, c. 153, 34 Stat. 850, the Congress directed:

"That the Superintendent of Documents is hereby authorized and directed to supply one copy of each document delivered to him for distribution to State and Territorial libraries and designated depositories to the Library of the Philippine government, * * *."

(8) By the Act of March 4, 1907, "An Act to provide for the establishment of an agricultural bank in the Philippine Islands", c. 2908, 34 Stat. 1282, the Congress provided:

"That for the purpose of aiding in the establishment and operation of such an agricultural bank in the Philippine Islands as the general government thereof may hereafter specifically authorize the Philippine government is empowered to guarantee an income of not exceeding four per centum per annum upon cash capital actually invested by individuals or corporations in such agricultural bank; such guarantee shall be granted by an Act of the Philippine Commission which shall contain, among others, the following provisions:

"First. The guaranty shall be made to a company organized under the laws of the Philippine Islands, with its principal office in Manila and with branches in such parts of the islands as may be designated by the Philippine Commission.

"Second. The bank shall not grant loans except to those engaged in agricultural * * *.

"Third. No loan exceeding in amount five thousand dollars shall be made except upon the written authorization of the Secretary of Finance and Justice of the Philippine Islands.

"Fourth. Interest charge on loans shall not exceed ten per centum per annum: * * *

"For the further security of the Philippine Government said government shall provide by the aforesaid Act proper rules, including those for determining the actual cash capital invested in such banks and the net income * * *."

(9) By the Act of April 29, 1908, c. 152, 35 Stat. 70, it was provided:

"That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago.

"Sec. 2. That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United

States from the Philippine Islands which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries.

"Sec. 3. That the provisions of law restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from one port of the United States to another port of the United States shall not be applicable to foreign vessels engaging in trade between the Philippine Islands and the United States."

(10) By the Act of August 5, 1909, entitled "An Act to Raise Revenue for the Philippine Islands, and for other purposes", c. 8, 36 Stat. 130, the Congress enacted an entirely separate tariff law for those Islands. The first section provides:

"That on and after sixty days following the passage of this Act, except as otherwise specifically provided in this Act, there shall be levied, collected, and paid, upon all articles, goods, wares, or merchandise of every kind and class entering the jurisdiction of the Philippine Islands, from any place or places, including the United States and its possessions, and in any manner whatsoever, either with intent to unlade therein, or which, after such entering, are consumed therein, or become incorporated into the general mass of property within said islands, the rates of import duty which are by this Act specifically provided."

Section 12 of that Act provides (36 Stat. at page 173):

"Sec. 12. That all articles, except rice, the growth, product, or manufacture of the United States and its possessions to which the customs tariff in force in the United States is applied and upon which no drawback of customs duties has been allowed therein going to the Philippine Islands shall hereafter be admitted therein free of customs duty when the same are shipped directly from the country of origin to the country of destination: *Provided*, That direct shipments shall include shipment in bond to foreign territory contiguous to the United States."

(11) It was also provided by the former Organic Act for the Philippine Islands, the "Foraker Act", *supra*, Act of July 1, 1902, c. 1369, Sec. 11, 32 Stat. 691, p. 695:

> "Sec. 11. That the government of the Philippine Islands is hereby authorized to provide for the needs of commerce by improving the harbors and navigable waters of said islands and to construct and maintain in said navigable waters and upon the shore adjacent thereto bonded warehouses, wharves, piers, light houses, signal and life-saving stations, buoys, and like instruments of commerce, and to adopt and to enforce regulations in regard thereto, including bonded warehouses wherein articles not intended to be imported into said islands nor mingled with the property therein, but brought into a port of said islands for reshipment to another country, may be deposited in bond and reshipped to another country without the payment of customs duties or charges."

(12) It was further provided by Section 84 of the same "Foraker Act", of July 1, 1902 (32 Stat. at p. 711):

> "Sec. 84. That the laws relating to entry, clearance, and the manifests of steamships and other vessels arriving from or going to foreign ports shall apply to the voyages each way between the Philippine Islands and the United States and the possessions thereof and all laws relating to the collection and protection of customs duties not inconsistent with the Act of Congress of March 8, 1902, 'Temporarily to Provide Revenue for the Philippine Islands', shall apply in the case of vessels and goods arriving from said islands in the United States and its aforesaid possessions.
>
> "The laws relating to seamen on foreign voyages shall apply to seamen on vessels going from the United States and its possessions aforesaid to said islands, • • • •.
>
> "The provisions of chapters 6 and 7, Title 48, Revised Statutes, so far as now in force, and any amendments thereof, shall apply to vessels making voyages

either way between ports of the United States or its aforesaid possessions and ports in the Islands; and the provisions of law relating to public health and quarantine shall apply in the case of all vessels entering a port of the United States or its aforesaid possessions from said islands, * * *."

National Bank Act

(13) Section 6 of the National Bank Act of June 3, 1864, c. 106, 13 Stat. 99, 101, carried forward without change in this respect into Section 5134 of the Revised Statutes (12 U. S. Code, 22) provides in pertinent part:

> That the persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specify—
>
> First. The name * * *.
>
> Second. The place where its operations of discount and deposit are to be carried on, designating the state, territory, or district, and also the particular county and city, town, or village.
>
> Third. The amount of its capital stock, and the number of shares * * *.
>
> Fourth. The names and places of residence of the shareholders, and the number of shares held by each of them.
>
> Fifth. A declaration that said certificate is made to enable such persons to avail themselves of the advantages of this act.

(14) The last three provisos of Section 41 of the Act of June 3, 1864, *supra*, 13 Stat. at p. 112, as reenacted in Section 5219 of the Revised Statutes, provided:

> Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the

manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

(15) By Acts of March 4, 1923, c. 267, 42 Stat. 1499, and March 25, 1926, c. 88, 44 Stat. 223, the foregoing Section 5219 of the Revised Statutes was amended so as to read as now (12 U. S. Code, Supp., 548; *italics supplied*):

Sec. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subsection (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. * * *

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other

financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: * * *

Federal Reserve Act

(16) Meantime by Section 25 of the Federal Reserve Act of December 23, 1913, c. 6, 38 Stat. 251, 273, the Congress had provided:

> Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board, upon such conditions and under such regulations as may be prescribed by the said board, for the purpose of securing authority to establish branches **in foreign countries or dependencies of the United States** for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States. Such application shall specify, in addition to the name and capital of the banking association filing it, the place or places where the banking operations proposed are to be carried on, and the amount of capital set aside for the conduct of its foreign business. The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient.
>
> Every national banking association which shall receive authority to establish foreign branches shall be required at all times to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and the Federal Reserve Board may order special examinations of the said foreign branches at such time or times as it may deem best. Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and its home office, and shall at the end of each fiscal period transfer to its general ledger the

profit or loss accruing at each branch as a separate item.

(17) By the Amendatory Act of September 7, 1916, c. 461, 39 Stat. 752, 755, the foregoing Section 25 was amended by inserting the words **"or insular possessions"** after the word "dependencies"; and by Section 2 of the Act of September 17, 1919, c. 60, 41 Stat. 285, 286 (12 U. S. Code, 601), the first two sentences were recast so as to read as follows (with further amendments not here pertinent):

> Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:
>
> First. To establish branches in foreign countries or dependencies or insular possessions of the United States, and to act if required to do so as fiscal agents of the United States.
>
> Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.
>
> Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

(18) Section 7 of the Internal Revenue Act of March 3, 1865, c. 78, 13 Stat. 469, 484, as carried into Section 5155 of the Revised Statutes, provided:

> Sec. 5155. It shall be lawful for any bank or banking association organized under State laws, and having branches, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at the mother-bank, and each branch, to be regulated by the amount of capital assigned to and used by each.

It was amended by Section 7 of the Act of February 25, 1927, amending the banking laws, c. 191, 44 Stat. 1224, 1228, and further amended by Section 23 of the banking act of 1933 (Act of June 16, 1933, c. 89, 48 Stat. 162, 189-190), so as to read:

> Sec. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:
>
> (a) A national banking association may retain and operate such branch or branches as it may have in lawful operation at the date of the approval of this Act, and any national banking association which has continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding the approval of this Act may continue to maintain and operate such branch.
>
> (b) If a State bank is hereafter converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated associations may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank at the date of the approval of the Act.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. No such association shall establish a branch outside of the city, town or village in which it is situated unless it has a paid-in and unimpaired capital stock of not less than $500,000: *Provided*, That in States with a population of less than one million, and which have no cities located therein with a population exceeding one hundred thousand, the capital shall be not less than one-half million, and which have no cities located therein with a population exceeding fifty thousand, the capital shall not be less than $100,000.

(d) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

(g) This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as

amended, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.[4]

(h) The words "State bank", "State banks", "bank", or "banks", as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

PHILIPPINE STATUTES:

(1) Sections 1499[5] and 1502 of the Philippine Administrative Code (Philippine Act No. 2711, approved March 10, 1917) under which the taxes here involved were levied, together with the enacting clause of the Code, read as follows:

"For the purpose of adapting it to the Jones Law and the Reorganization Act, Act numbered two thousand six hundred and fifty-seven, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:

"Section 1. *Title of Act.*—This Act shall be known as the Administrative Code.

"Sec. 1499.[5-a] *Tax on capital, deposits, and circulations of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulations:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether pay-

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[4] Re-enacted, without any change as to branches located outside of the continental United States, by the Act of August 23, 1935, c. 614, Sec. 305, 49 Stat. ___; Pub. No. 305, 74th Cong.; 12 U. S. Code 36 ("October, 1935, Special Pamphlet").

[5] As amended by Act No. 3199.

[5-a] As amended by Act 3199.

able on demand, or on some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

(d) "Bank" as herein used, includes every incorporated or other bank, and every person, association or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promisory notes are received for discount or for sale.

"Capital employed" does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security.

Sec. 1502. *Computing resources of bank incorporated abroad.*—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank.[6]

[6] These two Sections 1499 and 1502 of the present Administrative Code were reenactments without change of Sections 1654 and 1657 of the former Administrative Code,

(2) Sections 1654 and 1657 of the former Philippine Administrative Code of 1916 provided:

"Sec. 1654. Tax on capital, deposits, and circulation of banks.—Subject to the exemptions herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand or at some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

"(d) Upon the average amount of such circulation issued as above, being beyond the amount of the paid-in capital of the bank, for each month, and as an additional tax, one per centum.

"'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stock, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

Philippine Act No. 2657 of February 24, 1916 (*infra*, Appendix I, 64-65), which was in force on August 29, 1916, the date of the enactment of the present Organic Act of Congress for the Philippines. The present Administrative Code, Act No. 2711, is, in form, simply an amendment of the former Administrative Code of 1916 (*ante*, p. 62), "for the purpose of adapting it to the Jones Law", the present Organic Act, and to the Philippine "Reorganization Act", Act No. 2666, approved November 18, 1916.

"'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such a bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security."

"Sec. 1657. Computing resources of bank incorporated abroad.—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank."

APPENDIX II

Resumé of Territorial Organic Acts before the Spanish War, in relation to extending statutory laws of the United States to the Territories.

(1) In the earlier Organic Acts for the Territories, the Congress did not extend the statutory laws of the United States generally to the Territory; but, instead, extended only such Acts as were particularly named in the Organic Act. Thus:

The Organic Act for the Territory of Orleans and District of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285, provided, with reference to the Territory of Orleans thereby created:

"Sec. 7. That the following Acts, that is to say:

"An Act for the punishment of certain crimes against the United States.

"An Act, in addition to an Act for the punishment of certain crimes against the United States.

"An Act to prevent citizens of the United States from privateering • • •.

"An Act for the punishment • • •.

"An Act respecting fugitives from justice, • • •.

"An Act prohibiting the carrying on of the slave trade • • •.

"An Act to prevent the importation of certain persons • • •.

"An Act to establish the post office of the United States.

"An Act • • •.

"An Act • • •.

"An Act making provision relative to rations for Indians, • • •, *shall extend to, and have full force and effect in the above mentioned Territories.*" (*Italics supplied*).[1]

(2) The Organic Act for the Territory of Florida, Act

[1] The very first Territorial Organic Act after the adoption of the Constitution was the Act of August 7, 1789, c. 8, 1 Stat. 50, for the government of the territory northwest of the River Ohio, enacted merely in order to continue in force the Ordinance of 1787, and to adapt it to the Con-

of March 30, 1822, c. 13, 3 Stat. 654, contained a similar enumeration, but *with a general provision added.* It provided:

> Sec. 9. That the following Acts, that is to say:
>
> "An Act for the punishment of certain crimes • • •.
>
> "An Act to provide for the punishment • • •.
>
> "An Act in addition to the Act • • •.
>
> "An Act for the punishment • • •.
>
> "An Act respecting fugitives from justice • • •.
>
> "An Act to prohibit the carrying on of the slave trade • • •.
>
> "An Act in addition to the Act • • •.
>
> "An Act to prevent settlements being made on lands ceded • • •.
>
> "An Act • • •.
>
> "An Act • • •.
>
> "An Act • • •.

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stitution. That Act contained no express provisions relative to the force of the statutory laws of the United States in the Territory.

The next Act, that of May 26th, 1790, c. 14, 1 Stat. 123, erecting the territory south of the Ohio River, merely provided:

> "And the government of the said territory south of the Ohio shall be similar to that which is now exercised in the territory northwest of the Ohio";

and a similar simple provision was made in Section 6 of the next following Act, that for Mississippi Territory, Act of April 7, 1798, c. 28, 1 Stat. 549, 550. The Territories of Indiana, Michigan, Illinois, Missouri, Alabama and Arkansas, being formed by the division of previously existing Territories, the Congress contented itself with continuing in force in those Territories respectively the laws theretofore in force in the parent Territories, without any express provision as to the extension thereto of the statutory laws of the United States. (INDIANA, Act of May 7, 1800, 2 Stat. 58; MICHIGAN, Act of January 11, 1805, 2 Stat. 309; ILLINOIS, Act of February 3, 1809, 2 Stat. 514; MISSOURI, Act of June 4, 1812, 2 Stat. 743; ALABAMA, Act of March 3, 1817, 3 Stat. 371; ARKANSAS, Act of March 2, 1819, 3 Stat. 493).

"An Act * * *.

"And the laws of the United States relating to the revenue and its collection, subject to the modifications stipulated by the 15th Article of the Treaty * * *; *and all other public laws of the United States, which are not repugnant to the provisions of this Act, shall extend to, and have full force and effect in, the Territory aforesaid*". (*Italics supplied*)

(3) In the Organic Act for Wisconsin the Congress entirely omitted any enumeration of particular statutory laws of the United States to be extended to the Territory, and declared broadly (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15):

"Sec. 12. That the inhabitants of the Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States northwest of the River Ohio * * *; *and further, the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof may be applicable.*" (*Italics supplied*)

Substantially the same provision was repeated in the Organic Act for the Territory of Iowa, Act of June 12, 1838, c. 96, Sec. 12, 5 Stat. 235, 239; in the Organic Act for the Territory of Oregon, Act of August 14, 1848, c. 177, Sec. 14, 9 Stat. 323, 329; and in that for Minnesota, Act of March 3, 1849, c. 121, Sec. 12, 9 Stat. 403, 407,—in each case without any specific enumeration of any particular federal statutes to be extended to the Territory.

(4) In the Organic Act for the Territory of New Mexico, the first Territory to be organized on the lands acquired by the Mexican War (Act of September 9, 1850, c. 49, Sec. 17, 9 Stat. 446, 452), the Congress went one step further, expressly extending "the Constitution" as well as "all laws of the United States which are not locally inapplicable" to the Territory,—the provision reading:

"Sec. 17. That the Constitution, and all laws of the

United States which are not locally inapplicable shall have the same force and effect within the said territory of New Mexico as elsewhere within the United States."

That provision was repeated in the Organic Act for the Territory of UTAH, Act of September 9, 1850, c. 51, Sec. 17, 9 Stat. 453, 458;[2] in that for COLORADO, Act of February 28, 1861, c. 59, Sec. 16, 12 Stat. 172, 176;[3] in that for NEVADA, Act of March 2, 1861, c. 133, Sec. 16, 12 Stat. 209, 214; for DAKOTA, Act of March 2, 1861, c. 136, Sec. 16, 12 Stat. 239, 244;[4] for IDAHO, Act of March 3, 1863,

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[2] The Territory of Washington being carved out of that of Oregon, the Congress contented itself, as in earlier cases, with simply directing that the laws "now in force therein" by virtue of the legislation of Congress in reference to the Territory of Oregon were "continued in force in said Territory of Washington until they shall be repealed or amended by future legislation", without any express provision as to extending federal legislation to this Territory. Act of March 2, 1853, c. 90, Sec. 12, 10 Stat. 172.

[3] The Organic Act for the Territories of Nebraska and Kansas,—"the Kansas Nebraska Act",—of May 30, 1854, c. 59, 10 Stat. 277, was unusual in form, because of the slavery question. It provided, however (Sec. 14, 10 Stat. 282-283): "That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere in the United States, *except*" the "Missouri Compromise" legislation.

[4] The Territory of Arizona being carved out of that of New Mexico, the Congress made no special provision in its Organic Act for extending the statutory laws of the United States to the new Territory, but contented itself with providing that "all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this Act" should extend to Arizona "until repealed or amended by future legislation", *except* those recognizing the relation of master and slave, and that there should "neither be slavery nor involuntary servitude in the said Territory" otherwise than in the punishment of crime. Act of Feb'y 24, 1863, c. 56, Secs. 2 and 3, 12 Stat. 664.

c. 117, Sec. 13, 12 Stat. 808, 813; for MONTANA, Act of May 26, 1864, c. 95, Sec. 13, 13 Stat. 85, 91; and for WYOMING, Act of July 25, 1868, c. 235, Sec. 16, 15 Stat. 178

APPENDIX III

The Acts of the Philippine Legislature creating the Philippine National Bank provide, in pertinent part:

No. 2612.—*An Act creating the Philippine National Bank.*

Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

Sec. 3. The capital of the National Bank shall be twenty million pesos, Philippine currency, divided into two hundred thousand shares of the value, at par, of one hundred pesos, Philippine currency, each.

Sec. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall purchase one hundred and one thousand shares, at par, of the said National Bank, the payment for said shares of the Government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par, as hereinafter provided.

Sec. 5. The following sums are hereby appropriated for the payment of the shares to be purchased by the Government of the Philippine Islands.

(a) The sum of one million three hundred thousand pesos which is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated;

(b) One million pesos, on or before July thirty-first, nineteen hundred and sixteen, and another one million pesos on or before January thirty-first, nineteen hundred and seventeen, which shall be invested from the insurance fund created by Act Numbered Seventeen hundred and twenty-eight, the public works bonds sinking fund, created by Act Numbered Seventeen hundred and twenty-nine, and the friar lands bonds sinking fund, created by Act Numbered Twenty-five hundred and fifty: * * *

Sec. 6. All the assets and liabilities of the Government Agricultural Bank of the Philippine Islands,[1] created under Act Numbered Eighteen hundred and sixty-five, as amended, shall be transferred to the National Bank: *Provided*, That the transfer of the assets of the Agricultural Bank, represented by the capital and the net profits thereof shall be made as part payment of the one hundred and one thousand shares subscribed by the Government of the Philippine Islands. This transfer shall be understood as taking place upon the inauguration of the National Bank in conformity with the provisions of section nine of this Act, after which the National Bank shall be subrogated to all the rights, actions and obligations of the Agricultural Bank, and the Agricultural Bank shall thereafter be deemed abolished.

Sec. 8. At no time shall shares be sold to the public if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands.

Sec. 9. The National Bank shall be inaugurated within one hundred and eighty days from and after the passage of this Act, and the Governor-General shall fix such inauguration by proclamation upon the certificate of the Insular Auditor and the president of the bank that said institution is ready to begin operations.

Sec. 15. The National Bank is hereby authorized to issue real estate bonds in any sum not to exceed ninety per cent of the amount of real estate loans held by said bank, under section ten herein. Said bonds shall be engraved. Said bonds shall be signed by the president of the bank, authenticated by the Insular Auditor * * *.

Sec. 18. Said National Bank is hereby authorized to issue its notes, which said notes shall be known as circulating notes. * * *

Sec. 19. The Philippine National Bank is hereby

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[1] See Act of Congress providing for the establishment of the Agricultural Bank, and authorizing the Philippine government to guarantee its income; Act of March 4, 1907, c. 2908, 34 Stat. 1282; Appendix I, *ante*, pp. 52-53.

authorized to receive deposits of funds of the Insular Government, the provinces, municipalities, Post Savings Bank, associations, corporations, and private persons, and it is hereby made obligatory for the aforesaid Insular, provincial, and municipal governments to make their deposits in the National Bank. The interest paid by said bank on deposits so made shall not exceed four per centum per annum: *Provided, however,* That whenever in the judgment of the Governor-General, it is in the public interest to make deposits from public funds in other banks he is hereby authorized to cause the same to be done under such terms and conditions as he may deem proper.

Sec. 20. The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the bank, who shall be chief executive thereof and chairman of the board at the same time, one vice-president, who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided.

The president of the bank shall have power * * *. It shall also be his duty—

(a) To make, * * * all contracts * * *;

(b) To report weekly to the board of directors * * *;

(c) To furnish, upon request of the Governor-General of the Philippine Islands, any information in his possession regarding the operations of said bank.

Sec. 21. The president and vice-president shall be appointed by the Governor-General, by and with the consent of the Upper House of the Philippine Legislature, and may be removed for cause by said Governor-General, by and with the consent of said House. The five remaining members shall be elected and may be removed in accordance with the provisions of Act Numbered Fourteen hundred and fifty-nine, the Corporation Law.

Sec. 24. All the other officers and employees of said National Bank or any branch thereof, shall, before entering upon the performance of their duties, furnish a fidelity bond * * *. For this purpose, all officers and

employees of the National Bank shall be deemed public officers and employees respectively, * * *.

Sec. 25. The Attorney General of the Philippine Islands shall be attorney for said National Bank: *Provided, however,* That the board of directors of said bank shall have the power to employ other attorneys in special cases.

Sec. 26. The Insular Auditor shall be *ex officio* auditor of the National Bank and it shall be his duty to make an examination of the books and the administration of the bank at least once every three months and report thereon to the Governor-General of the Philippine Islands and the board of directors of said bank.

Sec. 27. The National Bank shall be subject to inspection by the Insular Treasurer with regard to its solvency in the manner provided by law.

Sec. 28. The Secretary of Finance and Justice, the Insular Treasurer, and the Insular Auditor are hereby prohibited from owning stock in the National Bank, or from becoming indebted to said National Bank directly or indirectly, in any sum.

Sec. 29. The Insular Treasurer and Auditor or other officers designated by law to inspect or investigate the condition of said National Bank shall not reveal to any person other than the Governor-General and the board of directors the details of the inspection or investigation, nor shall they * * *.

Sec. 33. The said National Bank, by this Act created, may establish not to exceed two branches or agencies in the United States of America, at such points as may be determined upon by the board of directors of the said National Bank. It shall be the function of each of the said agencies—

(a) To receive, transmit and disburse any funds of the Philippine Government payable in the United States.

(b) To receive, transmit and disburse any funds of the United States Government which may be placed on deposit with, or entrusted to it.

(c) To receive, transmit and disburse any funds

of individuals, firms, companies or corporations engaged in business with the Philippine Islands, or having interests therein.

(d) To engage in business to the extent permitted by law of the United States with the Federal Reserve Bank of the district in which said branches or agencies may be located, and if and when permitted by law of the United States, to conduct a deposit and discount business with the said Federal Reserve Bank to the extent that conditions may require, under the instructions of the board of directors of the said National Bank.

Sec. 34. The National Bank may establish branch banks in the provincial capitals and in those municipalities in which, in the judgment of the board of directors, the industrial, commercial, or agricultural movement may require it. * * *

With the authorization of the Governor-General first had, the board of directors may appoint as agents, cashiers or tellers of said banks the provincial or municipal treasurers, * * *.

Sec. 47. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof, and shall be available for any appropriation.

Sec. 48. The legal existence of the Philippine National Bank created by this Act shall be for a period of fifty years, counting from the day on which it began officially its operations. This period may be extended for fifty years more by an Act of the Philippine Legislature.

Sec. 49. All banks not organized and transacting business under a charter granted by the Philippine Legislature expressly exempting them from the restrictions and penalties of this section, and all persons or corporations doing the business of bankers, brokers, or savings institutions, are prohibited from using the word "national" as a portion of the name or title of such bank, corporation, firm or partnership; and any violation of this prohibition committed after ninety days subsequent to the date of enactment of this Act

shall subject the party chargeable therewith to a penalty of not less than one hundred pesos for each day during which it is committed or repeated.

Sec. 50. For a period of six months from and after the enactment of this Act, the president, with the approval of the board of directors of the National Bank, may, with the prior approval of the proper head of Department in which such official or employee is employed, require the services of any official or employee of the Insular or provincial governments for the purpose of assisting in the organization of the National Bank. * * *

Sec. 54. This Act shall take effect on its passage. *Enacted*, February 4, 1916.

No. 2747.—*An Act to amend in certain particulars Act Numbered Twenty-six hundred and twelve, entitled "An Act creating the Philippine National Bank."*

Section 1. In order to explain certain provisions, increase the stability of the institution, and extend its powers, Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:

"Sec. 51. The Philippine National Bank is hereby authorized to guarantee, both as to principal and interest, or either, bonds issued by duly incorporated companies for the erection of and addition or additions to industrial plants or manufactories principally used for the manufacture and preparation of the products of the Philippine Islands: *Provided, however,* That such guarantee shall only be lawful when approved by a committee composed of the Governor-General of the Philippine Islands and the Presiding Officers of the two Houses of the Philippine Legislature.

"Subject to the same approval, the National Bank is hereby authorized to purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products of the Philippine Islands. Such bonds shall be secured by a first mort-

gage or deed of trust on the property of the company. The face value of the bonds issued and secured by such mortgage or deed of trust shall not exceed sixty per cent (60%) of the fair value of the property securing the bonds. The property serving as security for the bonds shall consist of land, buildings, machinery, and equipment of such company in the Philippine Islands."

Sec. 2. This Act shall take effect on its approval. *Approved,* February 20, 1918.

No. 2938.—*An Act to amend Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," as amended by Act Numbered Twenty-Seven hundred and forty-seven.*

Section 1. Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," as amended by Act Numbered Twenty-seven hundred and forty-seven, is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:

"Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

"Sec. 2. • • •

"Sec. 3. The National Bank is hereby authorized to increase its capital from twenty million pesos, Philippine currency, to fifty million pesos, Philippine currency, and may for this purpose make a new issue of three hundred thousand shares of stock, which shall be denominated the second issue, at the par value of one hundred pesos, Philippine currency, each.

"Sec. 4. The Government of the Philippine Islands, not later than June thirtieth, nineteen hundred and twenty-one, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment of the said shares of the Government to be made as hereinafter

provided. The remaining shares may be offered to the provincial and municipal governments or to the public at a price not below par which the board of directors of the Bank shall from time to time determine: *Provided*, That the Government of the Philippine Islands, upon agreement with the board of directors of the Bank, may at any time after June thirtieth, nineteen hundred and twenty-one, purchase all or part of the stock on hand at a price not below par.

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,'[2] composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

"Sec. 5. There are hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, such sums as may be necessary for the payment of the shares to be purchased by the Government of the Philippine Islands: *Provided*, That the capital and surplus of the Agricultural Bank of the Philippine Islands shall be applied primarily to said payment: *And provided, further*, That no sum shall be set up on the books of the Auditor until it shall be necessary to make the payment or payments authorized by this Act.

No. 3174.—*An Act to rehabilitate the Philippine National Bank, making certain appropriations for this purpose and amending the Charter of said Bank contained in Act Numbered Twenty-six hundred and twelve, as amended, and for other purposes.*

Section 1. The authorized paid-up capital stock of the Philippine National Bank is hereby reduced to one hundred thousand shares of the value at par of one hundred pesos each, which number shall include the

[2] This voting provision was held invalid by this court, holding that the voting power, an executive function, is in the Governor-General. *Springer* vs. *Gov't of the Philippine Islands, supra*, 277 U. S. 189, 197 *es seq.*, 209.

shares at present held by the public: *Provided,* That the Bank may purchase the shares held privately at the price at which they were quoted on the date of the registration of the sale in the books of the Bank, provided such price does not exceed their value at par. The Board of Directors, with the approval of the Secretary of Finance, shall determine what was the price so quoted. *No stock shall be sold to the public hereafter.* (*Italics supplied*)

APPENDIX IV

Examples of Acts of Congress specifically extending certain sections of the Revised Statutes, and other Acts of Congress, to the Philippine Islands, from time to time.

A. WHILE THE FORMER ACT, THE PHILIPPINE "FORAKER ACT" OF 1902 WAS IN EFFECT, AND BEFORE THE ENACTMENT OF THE PRESENT ORGANIC ACT, THE "JONES LAW" OF AUGUST 29, 1916.

(1) Section 76 of the "Foraker Act" for the Philippines, itself, expressly provided:

> "That the laws of the United States relating to mints and coinage, so far as applicable, are hereby extended to the coinage of said Islands" (Appendix I, *ante*, p. 50).

(2) By Section 84 of the same "Foraker Act" for the Philippines of July 1, 1902, the federal

> "laws relating to entry, clearance and the manifests of steamships and other vessels arriving from or going to foreign ports,"

and

> "all laws relating to the collection and protection of customs duties not inconsistent with the Act of Congress of March 8, 1902, 'Temporarily to provide revenue for the Philippine Islands',"

and also the

> "laws relating to seamen on foreign voyages,"

and

> "The provisions of chapters 6 and 7, Title 48, Revised Statutes, so far as now in force, and any amendments thereof,"

and likewise

> "the provisions of law relating to public health and quarantine,"

were specifically extended to vessels engaged in voyages

between the Philippine Islands and "the United States and the possessions thereof." (Appendix I, *ante*, pp. 55-56).

(3) By the Act of February 9, 1903, c. 529, 32 Stat. 806, Section 1014 and also Sections 5278 and 5279 of the Revised Statutes, "so far as applicable," were expressly extended to the Philippine Islands (Appendix I, *ante*, pp. 51-52).

(4) By the Act of February 6, 1905, c. 545, 33 Stat. 698, Sections 5270, 5271, 5272, 5273, 5274, 5275, 5276, and 5277, and also Sections 5409 and 5410, of the Revised Statutes, "so far as applicable," were specifically extended to the Philippine Islands. (Appendix I, *ante*, p. 52).

(5) In the Narcotic Act of December 17, 1914, 38 Stat. 785, 787, the Congress specifically and definitely indicated its intention that that Act should run to the Philippine Islands by providing (Sec. 2) that in "the Philippine Islands administration of this Act" shall be looked after by the local internal revenue officers, and further that "the Courts of First Instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said Islands." (*Confer, Opinion of the Attorney General concerning the Narcotic Drugs Import and Export Act of 1922*, 34 Ops. Atty.-Gen. 550, 551-553; *quoted ante*, pp. 25-26).

B. ENACTED SINCE THE PASSAGE OF THE PRESENT ORGANIC ACT FOR THE PHILIPPINE ISLANDS, THE "JONES LAW" OF AUGUST 29, 1916.

(1) By Section 23 of the Income Tax Act of September 8, 1916, c. 463, 39 Stat. 756, 776,[1] the Congress specifically extended the Income Tax Act to the "Philippine Islands". (*Anter*, p. 25; *quoting the opinion of the Attorney General*

[1] *The very next day after the passage of the amendment* of September 7, 1916, *to Section 25 of the Federal Reserve Act*, c. 461, 39 Stat. 752, 755 (*ante*, pp. 29-30; Appendix I, *ante*, p. 59), which had employed simply the words "dependencies or insular possessions," without specifically mentioning the Philippine Islands. (*Confer, ante*, pp. 29-30).

concerning the Narcotic Drugs Import and Export Act, *supra,* 34 Ops. Atty. Gen. 550, 551-553).

(2) By the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 875, it was specifically provided that "this Act shall be enforced in the Philippine Islands by officers of the general government thereof." (*Ante,* p. 26, *quoting the opinion of the Attorney General concerning the* Narcotic Drugs Import and Export Act, *supra,* 34 Ops. Atty. Gen. 550, 551-553).

(3) By the National Defense Act as amended by the Act of June 15, 1917, c. 30, 40 Stat. 217, 231, the Congress specifically conferred upon the "Courts of First Instance in the Philippine Islands" jurisdiction of offenses under that Act committed within the Philippines, and by the same Act specifically provided that the insular district attorneys of the Philippine Islands "shall have the powers and perform the duties provided in this Act for United States Attorneys," thereby specifically expressing the Congressional will that that Act should run to the Philippine Islands. (*Ante,* p. 25, *quoting the opinion of the Attorney General in the matter of the* Narcotic Drugs Import and Export Act, *supra,* 34 Ops. Atty. Gen. 550, 551-553).

(4) In the Trading With the Enemy Act of October 6, 1917, c. 106, 40 Stat, 411, 425, the Congress specifically provided that "the several Courts of First Instance in the Philippine Islands shall have jurisdiction of offenses committed" under that Act within their territory, thus once more specifically indicating the express Congressional will that that particular Act should run to the Philippine Islands. (*Ante,* p. 26, *quoting the opinion of the Attorney General in the* Narcotic Drugs Import and Export Act *matter, supra,* 34 Ops. Atty. Gen. 550, 551-553.)

(5) Quite recently, when the Congress determined to extend to the Philippine Islands the 15% cut in the salaries of insular officials appointed by the President, it specifically named the Philippine Islands in the Act, directing (Inde-

pendent Offices Act of June 16, 1933, c. 101, Sec. 12, 48 Stat. 283, 307; *ante*, p. 23):

"Sec. 12. From the date of the approval of this Act and until July 1, 1934, the compensation of all officers and employees of the insular possessions of the United States, *including the Philippine Islands*, which is now fixed by Acts of Congress * * *, is hereby reduced fifteen per centum:" (*Italics supplied*).

APPENDIX V

OPPOSITE CONGRESSIONAL POLICIES WITH RESPECT TO PUERTO RICO ON THE ONE HAND, AND THE PHILIPPINES ON THE OTHER HAND

TREATY OF PEACE WITH SPAIN, signed at Paris December 10, 1898; ratification advised by the Senate, February 6, 1899; proclaimed April 11, 1899.

ARTICLE IX "* * * The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress" (30 Stat. 1754, 1759).

CONSTITUTION

ARTICLE IV, Section 3, Clause 2 "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territories or other Property belonging to the United States."

PHILIPPINES	PUERTO RICO
Senate Resolution upon advising ratification of the Treaty, debated February 6, 1899, passed February 14, 1899 (Cong. Rec. Vol. 32; Part 2, pp. 1479, 1480, 1487, 1846, 1847-1848)	*No corresponding resolution; nothing of that kind.*
"*Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled,* That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States; but it is	

the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands to prepare them for local self government, and in due time to make such disposition of said islands as will best promote the interests of the citizens of the United States and the inhabitants of said islands."

PHILIPPINES

"Foraker Act", first Organic Act, July 1, 1902 (c. 1369, sec. 1, 32 Stat. 691):

"The provisions of Section 1891 of the Revised Statutes of 1878[1] shall not apply to the Philippine Islands."

[1] Section 1891 of the Revised Statutes is the section extending, generally, "The Constitution and all laws of the United States which are not locally inapplicable" to the Territories; *ante*, Appendix I, p. 47, foot-note 1.

PUERTO RICO

"Foraker Act", first Organic Act for Puerto Rico, Act of April 12, 1900 (c. 191, sec. 14, 31 Stat. 77, 80):

"The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."

PHILIPPINES

"Jones Law", the second (present) Organic Act of August 29, 1916, c. 416, 39 Stat. 545:

PREAMBLE

"Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of

PUERTO RICO

"Jones Law", the second (present) Organic Act for Puerto Rico, March 2, 1917, c. 145, 39 Stat. 951.

No corresponding preamble or other provision. Nothing of that kind at all.

conquest or for territorial aggrandizement; and

"Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

"Whereas for the speedy accomplishment of such a purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the rights of sovereignty by the people of the United States in order that, by the use and exercise of popular franchise and governmental powers, they may be better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence."

PHILIPPINES

"Jones Law", Act of August 29, 1916, supra:

"Sec. 2. That all inhabitants of the Philippine Islands who were Spanish subjects * * * and their children * * * shall be deemed and held to be citizens of the Philippine Islands, except such as * * *: *Provided,*

PUERTO RICO

"Jones Law", Act of March 2, 1917, supra:

"Sec. 5. That all citizens of Puerto Rico, * * * and all natives of Puerto Rico who were temporarily absent from that island on April 11, 1899, and have since returned and are permanently residing in that island, and

That the Philippine Legislature * * * is hereby authorized to provide by law for the acquisition of Philippine citizenship * * *.

are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be **citizens of the United States.**

PHILIPPINES

"Jones Law", Act of August 29, 1916, supra:

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

PUERTO RICO

"Jones Law", Act of March 2, 1917, supra:

"Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."

PHILIPPINES

"Jones Law", Act of August 29, 1916, supra:

Section 7, after giving the Philippine Legislature power "when not inconsistent with this Act, by due enactment" to "amend, alter, modify or repeal, any law, civil or criminal, continued in force by this Act, as it may from time to time see fit," contains the following express provision, *most unusual in a territorial Organic Act:*

> *"This power shall specifically extend,* with the limitation herein provided as to the tariff, *to all laws relating to revenue and taxation in effect in the Philippines."* (*Ante,* Ap-

PUERTO RICO

"Jones Law", Act of March 2, 1917, supra:

No corresponding special provision.

The corresponding section, Sec. 57, containing the corresponding general grant of power to the Puerto Rican Legislature "to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act, as it may from time to time see fit", *entirely omits any such special provision* with reference to "laws relating to revenue and taxation." It contains nothing of the kind. (*Ante,* pp. 18-19.)

pendix I, p. 48; *italics supplied.*)

PHILIPPINES	PUERTO RICO
Sections of the Revised Statutes and other laws of the United States which the Congress desires to have run to the Philippines are EXPRESSLY EXTENDED *to those Islands by Acts of Congress from time to time;* as for example, Act of February 9, 1903, c. 529, 32 Stat. 806, specifically extending sections 1014 and 5278 and 5279 of the Revised Statutes to the Philippine Islands "so far as applicable"; and Act of February 6, 1905, c. 454, 33 Stat. 698, *"An Act to Extend Certain Provisions of the Revised Statutes of the United States to the Philippine Islands";* and other Acts collated in Appendix IV, *ante,* pp. 80-83.	TO THE EXACT CONTRARY. *Laws of the United States not desired to run to Puerto Rico are* EXPRESSLY EXCEPTED *by the Congress from the effect of the general language of Section 9 of the Puertan Rican Organic Act, supra, and are expressly directed* NOT TO RUN TO PUERTO RICO; as for example, the second paragraph of Section 38 of the Organic Act for Puerto Rico (39 Stat., at p. 964) directing that: "The Interstate Commerce Act and the several amendments * * * the safety-appliance Acts * * *, and the Act of Congress entitled, * * *, shall not apply to Puerto Rico."
PHILIPPINES	PUERTO RICO
Separate coinage laws (the peso instead of the dollar); *separate tariff laws;* and *separate immigration laws* (with power in the Philippine Legislature, with the approval of the President individually, to amend the tariff laws and the immigration laws for those Islands); *a separate Philippine customs service,* with a separate insular Collector of Customs; *separate banking laws*	*No such separate provisions; nothing of that kind at all.* The United States currency is the currency of Puerto Rico, as it is of the mainland; the United States tariff laws, immigration laws, and coastwise shipping laws are in force in Puerto Rico; NO separate government bank has ever been authorized for that Island.

authorizing the Philippine Legislature to guarantee the income on the capital stock of a Philippine government bank (the Agricultural Bank, now the Philippine National Bank); and *separate navigation laws* (the coastwise shipping laws of the United States not extended to the Philippines).

(See Acts of Congress collected in Appendix I, *ante*, pp. 49-56).

PHILIPPINES

Important Acts of Congress held not to run to the Philippine Islands, although containing language broadly directing that they run to all the territories and every place under the "control or jurisdiction" of the United States, or like expressions, where the Congress had not seen fit to insert words "specifically" mentioning the Philippine Islands:

1. "The Volstead Act", National Prohibition Act, 32 Ops. Atty. Gen. 258, 259.
2. The Narcotic Drugs Act; 34 Ops. Atty. Gen. 550, 551-553.
3. The National Industrial Recovery Act, Ops. Atty. Gen., Advance Sheets, December 2, 1933.

PUERTO RICO

No such decisions at all.

(See as to above opinions of the Attorneys General, *ante*, pp. 24-26).

PHILIPPINES	PUERTO RICO
Independence Act of March 24, 1934, c. 84, 48 Stat. 456, under which the new "Commonwealth Government" of the Philippines is being organized; contemplating complete political independence in about ten years.	*Nothing of the kind.*